

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 3:06-CR-719
5 Plaintiff, -
6 v. - Toledo, Ohio
7 MOHAMMAD ZAKI AMAWI, et al., - April 2, 2008
8 Defendants. - Trial
9 -----

10 VOLUME 20 TRANSCRIPT OF TRIAL
11 BEFORE THE HONORABLE JAMES G. CARR
12 UNITED STATES DISTRICT CHIEF JUDGE, AND A JURY

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23 Proceedings recorded by mechanical stenography, transcript
24 produced by notereading.
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08:36:58 **1** (Reconvened at 8:36 a.m.)

08:36:58 **2** THE COURT: I'll read the instructions, and we'll
3 go from there.

08:37:07 **4** MR. BOSS: Your Honor, we would request the
5 opportunity to discuss an evidentiary matter before we bring the
08:37:13 **6** jury in.

08:37:15 **7** THE COURT: I want these called to my attention as
8 soon as you can. I don't like having the jury wait. We'll
9 take a recess after the instructions are read. That is an
08:37:27 **10** ironclad, iron-bound rule. If you want to talk to me, if you
11 have an objection, e-mail me. E-mail me the night before.
12 E-mail me that morning. I'm sorry, Mr. Boss, but it really --
13 let me know promptly, whatever it is notify everybody else and
08:37:48 **14** we'll deal with it.

08:37:51 **15** MR. BOSS: 30 seconds ago I was handed a document
16 the government intends to use with its first witness.

17 THE COURT: What's the problem?

08:38:01 **18** MR. BOSS: Would you like to fill in the Court.

19 MR. SOFER: Your Honor, again in an attempt to try
20 to make things smooth we gave to Counsel a copy of a spreadsheet
08:38:12 **21** essentially which is a summary, among other things, of the
08:38:19 **22** recordings, that is as -- The jury is here.

08:38:34 **23** THE COURT: That's okay.

08:39:34 **24** (Jury enters the courtroom.)

08:39:35 **25** THE COURT: Good morning, ladies and gentlemen.

1 On your chairs are the instructions I will read in a moment. I

2 would ask that you read along with me. Please don't read

08:39:44 **3** ahead, just follow along as I read you these instructions.

08:39:48 **4** Preliminary instruction, introduction.

5 Now that you have heard the opening statements, I

6 want to give you preliminary instructions as to your duties as

7 jurors.

08:40:01 **8** Then I will give you initial instructions as to the

9 crimes charged in the indictment against the defendants. These

10 instructions include details as to what the government, to your

08:40:16 **11** unanimous satisfaction, must prove beyond a reasonable doubt for

08:40:19 **12** you to return a guilty verdict.

08:40:21 **13** Please keep in mind that these are preliminary

08:40:26 **14** instructions, intended for your general guidance during the

08:40:30 **15** presentation of evidence. Once you have heard all the evidence

16 and are about to begin your deliberations, I will give my final

08:40:39 **17** instructions, which are to control your deliberations.

08:40:42 **18** Our normal trial day will be 8:30 to 4:30, Tuesday

19 through Friday. If I expect a change, I will let you know.

20 If you cannot accommodate any change, please let Amy know, and

21 I'll make whatever adjustment is necessary.

08:41:06 **22** It's important that you hear and see everything

23 that's presented to you by way of evidence, the arguments of

08:41:12 **24** counsel, my instructions, and my rulings. If for any reason you

08:41:17 **25** cannot hear or see, do not hesitate to let me know. Don't feel

08:41:24 **1** that you will be interfering in any way if you raise a hand and
2 is say, Judge, I can't hear you, or the witness or the lawyer.
3 Likewise, if you find yourself getting a little
4 sleepy, as quite honestly sometimes I do, please don't hesitate
5 to raise your hands and say, Judge, can we have a short break?
08:41:39 **6** Duty as jurors.
7 As jurors you are judges -- judges of the facts.
8 You must determine whether, on the basis of all the evidence,
9 the government has proven each and every fact that it must prove
08:41:53 **10** beyond a reasonable doubt for you to return a guilty verdict.
08:41:58 **11** That's your job.
12 My job is quite different. My job is simply to
13 tell you what the law is that you have to follow. Even if you
14 disagree with the law, or don't believe that the law makes
15 sense, you must still follow the law as I define it for you.
08:42:18 **16** Evidence: Objections and rulings.
08:42:23 **17** I want to remind you that evidence is what you hear
18 from the witnesses as they answer the lawyers' questions and
19 what you learn from the exhibits and other materials (including
20 in this case, audio recordings and video evidence). Nothing
21 else is evidence.
08:42:40 **22** Another part of my job is to determine what
23 evidence can be heard or seen by you. You have all seen scenes
24 of lawyers objecting and courts ruling.
08:42:51 **25** Do not hold it against any lawyer for objecting.

08:42:55 **1** He or she is simply calling my attention to the possibility that
2 evidence should not be admitted. There is no effort to hide
3 anything. The lawyer wants me to be sure that the evidence is
4 admissible.

5 Sometimes I will have to call counsel to sidebar or
08:43:14 **6** even take a recess to decide the issue. If so, don't speculate
08:43:19 **7** as to what is going on, or who may be saying or arguing what.

08:43:24 **8** Finally, when I sustain an objection or tell you to
9 ignore something, you must not consider the evidence that
08:43:34 **10** thereby has been excluded. This is so, even if you have heard
08:43:38 **11** already or seen the particular evidence.

08:43:45 **12** If you have heard or seen evidence which I exclude,
13 you must ignore it entirely. Likewise, if I sustain an
14 objection to evidence that you haven't heard or seen, you must
15 not wonder what that evidence might have been.

08:43:58 **16** Considering all the evidence.

08:44:02 **17** I have already told you that you must decide the
18 case based only on the evidence, and, in doing so, you must
19 consider all of the evidence.

08:44:13 **20** To do so, you must, as I've already noted, pay
08:44:19 **21** close attention throughout the entire trial. To help you
08:44:22 **22** remember the evidence, we have provided notebooks for you to
08:44:26 **23** use. You also -- you will also have a photo of each of the
24 witnesses on separate sheets of paper.

08:44:33 **25** I encourage you to take notes; you do not need to

1 do so, but it's likely that you'll be able better to remember
2 the testimony and understand the other evidence if you do.

08:44:45

3 I remind you that courts do not customarily have
4 testimony read back during deliberations. To do otherwise --

08:44:55

5 or permit jurors to expect that they will later have an

08:44:58

6 opportunity to hear portions of the evidence after it has been

08:45:01

7 presented during the trial -- would reduce the importance of

8 being attentive during the trial. A practice of reading back

08:45:09

9 portions of the testimony might also cause some of the evidence

08:45:13

10 to receive greater weight than it should deserve -- than it

11 should receive.

12 Thus, you should pay close attention to all the

13 testimony of all the witnesses as they testify.

08:45:28

14 Keeping an open mind.

15 Deciding the case on the basis of all the evidence

08:45:34

16 requires keeping an open mind until you, as the result of your

08:45:40

17 discussions with the other jurors, become persuaded that the

08:45:44

18 government has or has not proven a charge or charges beyond a

08:45:49

19 reasonable doubt.

08:45:51

20 To keep an open mind, avoid making any assessment

08:45:56

21 or reaching conclusions or judgments prematurely. This also

08:46:01

22 means not discussing the case until it is the proper time -- at

23 the end of the trial -- to start doing so.

08:46:09

24 Counsel for the parties.

08:46:12

25 You no doubt notice that several lawyers represent

08:46:16 **1** both the government and each of the defendants.

2 This is an important and somewhat complicated case,
3 and the number of attorneys involved reflects that fact.

4 Draw no inferences as to who should or might
5 prevail on the basis of the number of attorneys in the case.

6 That would not be a proper consideration for you as you decide
7 the case on the basis of the evidence and my instructions on the
8 law.

08:46:43 **9** Alternate jurors.

10 Just before the jury begins to deliberate, I will

08:46:51 **11** excuse the jurors who are serving as alternates. No final
12 decision has been made as to which jurors are the alternates and
13 which will deliberate.

08:47:00 **14** So all of you must assume that you will be among
15 the 12 jurors who will decide the case. I encourage all of you
16 to pay very close attention throughout the entire trial.

08:47:12 **17** This concludes my preliminary instructions on your

08:47:16 **18** performance of your duties as jurors. I will now give you my
19 preliminary instructions on the charges against the defendants.

20 Indictment: Summary.

21 In summary, the indictment charges the defendants
22 with three kinds of offenses.

08:47:34 **23** An indictment is not evidence; it is not proof of
24 anything. It is simply the formal notice to the defendants of
25 the government's allegations against them.

1 The indictment includes the following charges:

08:47:51 **2** Charge one: Conspiracy to kill or maim persons in a foreign

08:47:56 **3** country (all defendants); .

4 Charge two: Conspiracy to provide material support
5 or resources to terrorists (all defendants); .

6 Charge three: Distribution of information
7 concerning explosives or destructive devices with intent to
8 further a federal crime of violence (charge made against Mr.

08:48:22 **9** Amawi and Mr. El-Hindi).

08:48:24 **10** Charge one. Conspiracy to kill or maim persons in

08:48:33 **11** a foreign country.

08:48:36 **12** The defendants, Mohammad Zaki Amawi, Marwan Othman

13 El-Hindi, and Wassim I. Mazloun are each charged with conspiring

14 to kill or maim persons in a foreign country in violation of

15 Title 18, United States Code, Section 956-A. That statute

08:48:59 **16** provides that:

17 Whoever within the jurisdiction of the United

18 States, conspires with one or more other persons, regardless of

08:49:09 **19** where such other persons are located, to commit at any place

20 outside the United States an act that would constitute the

21 offense of murder or maiming if committed in the special

08:49:26 **22** maritime and territorial jurisdiction of the United States

23 shall, if any of the conspirators commits an act within the

08:49:33 **24** jurisdiction of the United States to effect any object of the

25 conspiracy, be submitted to punishment.

08:49:42 **1** To satisfy its burden of proof, the government must
08:49:46 **2** prove the following elements beyond a reasonable doubt:

08:49:49 **3** 1. Two or more people agreed to murder or maim a
08:49:56 **4** person or persons at some place outside the United States, as I
5 will define those offenses; .

08:50:05 **6** Second, the defendant knowingly and willingly
08:50:10 **7** joined the conspiracy; .

08:50:13 **8** Third, the defendant was within the jurisdiction of
9 the United States when he entered into the agreement; and.

10 Fourth, during the existence of the agreement, one
11 of the conspirators -- but not necessarily one of the
08:50:30 **12** defendants -- committed at least one overt act within the
08:50:36 **13** jurisdiction of the United States in furtherance of any object
08:50:43 **14** of the agreement.

08:50:44 **15** Quote, conspiracy, close quote, generally.

16 A criminal conspiracy is an unlawful agreement
08:50:57 **17** between two or more people to violate the law.

08:51:04 **18** The government is not required to show that the
08:51:08 **19** conspirators entered into an explicit, formal or detailed
08:51:14 **20** agreement.

21 You may find that the government has proven the
08:51:20 **22** existence of an unlawful conspiratorial agreement by direct
08:51:24 **23** proof. The government may also meet its burden of proving an
24 unlawful conspiratorial agreement on the basis of the
08:51:32 **25** circumstances and conduct of the defendants.

1 It is sufficient if two or more persons, in some
2 way or manner, formally or informally, impliedly or tacitly,
3 come to a common understanding to violate the law and accomplish
4 an unlawful plan.

5 If the government proves such understanding on the
6 part of a defendant, you need not find beyond a reasonable doubt
7 that the defendant knew all the details of the unlawful
8 agreement.

9 Defendants can be convicted of criminal conspiracy
10 even though they do not accomplish the criminal objective which
11 was the purpose of their agreement.

12 A defendant cannot conspire with only a government
13 agent: A government agent thus cannot be the only other member,
14 along with a single defendant, of a conspiracy.

15 Charge one. Element of agreement to murder or
16 maim outside the United States.

17 The government must first prove beyond a reasonable
18 doubt that a defendant entered into an agreement with at least
19 one other defendant to murder or maim a person or persons at
20 some place outside of the United States.

21 "Murder" means the unlawful killing of a human
22 being with malice aforethought.

23 A person is guilty of murder if he purposely or
24 knowingly causes the death of another human being, or if he
25 causes the death of another human being with extreme

1 indifference to the value of human life.

08:53:38 **2** "Maim" means to disfigure, cut, bite, or slit the
3 nose, ear or lip, or cut out or disable the tongue, or put out
4 or destroy an eye, or disable a limb or any member of another
08:53:55 **5** person; or throw or pour upon another person any scalding water,
6 corrosive acid, or caustic substance.

08:54:04 **7** "Outside the United States" means any place outside
8 the states of the United States, the District of Columbia, and
9 the territories and possessions of the United States, including
08:54:17 **10** the territorial sea and the overlying airspace.

08:54:20 **11** Charge one: Element of willful participation in the
12 agreement.

08:54:30 **13** The second element that the government must prove
08:54:34 **14** beyond a reasonable doubt is that the defendant willfully became
15 a party to an agreement to violate the law.

08:54:42 **16** To prove this element, the government must prove
17 beyond a reasonable doubt that a defendant willfully
08:54:52 **18** participated in the conspiratorial agreement to murder or maim
08:54:56 **19** someone outside the United States.

08:54:58 **20** To meet this burden, the government must prove
08:55:03 **21** beyond a reasonable doubt that the defendant voluntarily joined
22 in the agreement and was aware: First, of at least some of the
23 basic aims and purposes of the agreement, and second, that the
24 conduct contemplated by the agreement was wrongful or unlawful.

25 The government need not prove that the defendant

1 was aware of every detail of the agreement or even the identity
2 of the other parties to the agreement.

08:55:37 **3** The government need not prove that the defendant

08:55:41 **4** joined in all of the agreement's unlawful objectives.

5 Likewise, the government need not prove that the defendant

08:55:48 **6** participated in the conspiracy throughout its entire duration.

08:55:53 **7** A single act, if committed willfully while the defendant was a

8 member of the conspiracy, may suffice for conviction.

08:56:04 **9** The government must prove each defendant's

10 participation in the agreement by independent evidence of his

11 own acts or statements and those of the other alleged

08:56:17 **12** co-conspirators, and the reasonable inferences that may be drawn

13 from such statements or acts.

14 A defendant cannot, however, be convicted of

08:56:30 **15** participating in a conspiracy by mere presence at the scene of

16 an alleged crime or his mere knowledge that others were members

17 of a conspiracy. A person does not become a conspirator just

18 by being or associating with others who are conspirators, or by

08:56:53 **19** failing to object to what they are unlawfully planning or doing.

08:56:57 **20** This is so, even if he approved of what was happening, provided

08:57:03 **21** he did not join with the conspirators.

08:57:06 **22** Similarly, just because a defendant may have done

08:57:12 **23** something that happened to help a conspiracy does not make him a

24 conspirator unless the government proves he agreed to commit the

25 unlawful act or acts contemplated by the conspirators.

08:57:27 **1** For the government to meet its burden of proof, it
2 must prove beyond a reasonable doubt that the defendant, having
3 had an understanding of the unlawful character of the
08:57:41 **4** conspiracy, willfully engaged in, advised, or assisted in it for
5 the purpose of furthering its illegal undertaking.

08:57:51 **6** Charge one: Element of defendant within the
08:58:00 **7** jurisdiction of the United States when the unlawful agreement
8 was made.

08:58:04 **9** The government must prove that the defendant was
10 within the jurisdiction of the United States when the
08:58:11 **11** conspiratorial agreement was made.

12 The "jurisdiction of the United States" includes
08:58:19 **13** the territory of the states of the United States, the District
08:58:23 **14** of Columbia, and the territories and possessions of the United
08:58:26 **15** States.

08:58:26 **16** The Northern District of Ohio, in which Toledo is
17 located, the Eastern District of Michigan, in which Detroit and
18 its suburbs are located, and the Northern District of Illinois,
08:58:41 **19** in which Chicago is located, are all within the jurisdiction of
20 the United States.

08:58:45 **21** The government need not show that all the parties
22 to the agreement were within the jurisdiction of the United
08:58:51 **23** States when the agreement was made; rather, you must only find
08:58:56 **24** beyond a reasonable doubt that the defendant was within the
25 jurisdiction of the United States when the agreement was made.

08:59:06 **1** Charge one: Element of overt act.

08:59:11 **2** The government must also prove beyond a reasonable

08:59:17 **3** doubt that one of the members of the conspiracy committed at

4 least one overt act in the jurisdiction of the United States in

08:59:26 **5** furtherance of any object of the conspiracy.

6 To commit an overt act in furtherance of an object

7 of the conspiracy, a participant need not undertake a course of

08:59:43 **8** action that is certain or even likely to result in the success

9 of the conspiracy.

08:59:50 **10** The law does not require that the act be likely to

11 yield an illegal result, or that the act in question even be

09:00:02 **12** prohibited by law. Instead, for the defendant to be liable for

09:00:09 **13** conspiracy, you need only find beyond a reasonable doubt that he

09:00:16 **14** or another participant in the conspiracy committed an act for

09:00:21 **15** the purpose of furthering an object of the illegal agreement.

09:00:27 **16** The defendant himself need not have personally

17 engaged in or even known about the alleged act in furtherance of

09:00:35 **18** the conspiracy or the identity of the person committed the act.

19 Instead, the government must only prove beyond a

09:00:46 **20** reasonable doubt that one of the participants in the conspiracy

21 in which the defendant was a participant committed an act to

22 further an objective of the conspiracy.

09:00:58 **23** The government need not prove that the act actually

09:01:02 **24** furthered an objective of the conspiracy; rather, it need only

25 prove that one of the conspirators undertook an act or a series

1 of acts intended to further an object of the conspiracy.

09:01:15 **2** The government must, however, prove beyond a

09:01:21 **3** reasonable doubt that the act occurred during the existence of

4 the conspiracy. A conspirator's act after the agreement has

09:01:30 **5** ended cannot meet the government's burden with respect to this

6 element.

09:01:36 **7** When determining whether the alleged act was

8 intended to further an object of the agreement, consider all

9 the facts, and determine whether the circumstances permit you to

09:01:49 **10** conclude beyond a reasonable doubt that the act was intended to

11 further an object of the conspiracy.

09:01:57 **12** The government must prove that the act in

09:02:03 **13** furtherance of the conspiracy occurred within the jurisdiction

14 of the United States.

09:02:06 **15** Charge two: Conspiracy to provide material support

09:02:16 **16** or resources to terrorists.

09:02:21 **17** The defendants, Amawi, El-Hindi, and Mazloun, are

09:02:26 **18** each charged with conspiring to provide material support or

09:02:29 **19** resources to terrorists or terrorist activity in violation of

09:02:34 **20** Title 18, United States Code, Section 2339-A.

09:02:41 **21** This statute provides, in relevant part, that

22 whoever provides material support or resources knowing or

09:02:50 **23** intending that they are to be used in preparation for, or in

09:02:55 **24** carrying out, a violation of Section 2332 of this title or

09:03:03 **25** attempts or conspiracies to do such an act is guilty of a crime.

09:03:07 **1** The "material support" need not be to a particular
2 or specified terrorist group.

09:03:18 **3** Instead, the support must be known to further or
4 intended to further one of the criminal offenses set forth in
5 the statute. In this case, this includes a violation of Title
6 18, United States Code, Section 2332-A, which prohibits killing
09:03:40 **7** of United States nationals.

8 Charge two: Elements.

09:03:52 **9** To meet its burden of proof the government must
10 prove beyond a reasonable doubt:

09:03:57 **11** First, the defendant conspired to provide material
12 support or resources; and.

09:04:05 **13** 2. He did so, knowing or intending that the
14 support or resources were to be used in preparation for, or in
15 carrying out, the killing of United States nationals outside the
16 United States.

09:04:21 **17** While the government must prove that the defendant
18 knew or intended that the material support or resources in
19 question were to be used in preparation for, or in carrying out,
20 the killing of United States nationals outside the United
21 States, the government need not prove that the defendant himself
09:04:44 **22** or others actually killed United States nationals.

09:04:48 **23** The elements of a conspiracy, as defined with
24 regard to Charge One, apply to Charge Two as well.

09:04:57 **25** Charge Two, element of provision of material

09:05:06 **1** support.

09:05:07 **2** The term "material support or resources" includes

3 any property, tangible or intangible, or service, including

09:05:20 **4** currency or monetary instruments or financial securities,

5 training, communications equipment, explosives or personnel.

6 The term "training" means instruction or teaching

7 to impart a specific skill, as opposed to general knowledge.

09:05:41 **8** The term "personnel" means one or more persons who

09:05:48 **9** may be, or include, the defendant's own person.

09:05:52 **10** A defendant conspires to provide material support

11 or resources if he conspires to make available, or conspires to

12 transfer or send, support or resources.

09:06:09 **13** Charge Two, element of knowing or intending

09:06:15 **14** material support or resources would be used.

09:06:19 **15** The government must prove beyond a reasonable doubt

09:06:25 **16** that the defendant knew or intended that the material support

09:06:30 **17** was to be used in preparation for, or in carrying out, the

09:06:36 **18** killing of United States nationals.

09:06:39 **19** An act is done "knowingly" if the defendant is

09:06:45 **20** aware of the act and does not do it through ignorance, mistake,

21 or accident.

09:06:51 **22** An act is done "intentionally" if it is done

09:06:58 **23** deliberately.

24 The term "United States" includes all the states,

09:07:04 **25** territories, and possessions of the United States, and all

1 places and waters subject to the jurisdiction of the United
2 States.

3 A "national of the United States" is a citizen of
4 the United States or a person owing permanent allegiance to the
5 United States.

6 The government need not prove that the defendant
7 knew that his actions violated a specific statute; instead, you
8 must only find that the defendants knew or intended that their
9 actions would result in the type of conduct forbidden under the
10 statute I have described to you.

11 Charge Three: Distribution of information
12 concerning explosives or destructive devices with intent to
13 further a federal crime of violence.

14 The Defendants Amawi and El-Hindi have been charged
15 with two separate violations each of Title 18, United States
16 Code, Section 842(p)(2)(A) which states:

17 It shall be unlawful for any person to distribute
18 by any means information pertaining to, in whole or in part, the
19 manufacture or use of an explosive or destructive device, with
20 the intent that the information be used for, or in furtherance
21 of, an activity that constitutes a federal crime of violence.

22 Charge Three: Elements.

23 To meet its burden of proof, the government must
24 prove beyond a reasonable doubt that the defendant:

25 First, distributed, by any means, information

09:08:58 **1** pertaining to, in whole or in part, the manufacture or use of an
2 explosive or destructive device; and.

09:09:08 **3** Second, acted with the intent that the information
4 be used for, or in furtherance of, an activity that constitutes
5 a federal crime of violence, namely the killing of a United
6 States national outside the United States or an officer or
09:09:27 **7** employee of the United States.

09:09:28 **8** Charge Three, element of distribution of
09:09:37 **9** information pertaining to the manufacture or use of an explosive
10 or destructive device.

09:09:46 **11** The terms used in the first element of Charge Three
09:09:53 **12** have the following meanings.

09:09:55 **13** "Distribute" means to sell, issue, give, transfer,
14 or otherwise dispose of" by any means.

09:10:04 **15** "Explosive" is gun powder, powders used for
16 blasting, all forms of high explosives, blasting materials,
09:10:16 **17** fuses (other than electric circuit breakers), detonator, and
09:10:22 **18** other detonating agents, smokeless powder, other explosive or
19 incendiary device, and any chemical compounds, mechanical
09:10:32 **20** mixture, or device that contains any oxidizing and combustible
09:10:37 **21** unities, or other ingredients, in such proportion, quantities,
22 or packing, that ignition by fire, friction, concussion,
09:10:45 **23** percussion, or detonation of the compound, mixture, or device or
24 any part thereof may cause an explosion.

09:10:54 **25** "Destructive device" is:

1 Any explosive, incendiary or poison gas, 1. Bomb,
2 2. Grenade, 3. Rocket having a propellant charge of more than
3 four ounces, 4. Missile having an explosive or incendiary charge
4 of more than one-quarter ounce, 5. Mine, or 6. Device similar
5 to any of the devices described in the preceding clauses, and
6 any combination of parts either designed or intended for use in
09:11:30 7 converting any device into any destructive device described in
8 subparagraph A or B, and from which a destructive device may be
09:11:40 9 readily assembled.

09:11:44 10 "Federal crime of violence" is either:

09:11:48 11 A, an offense that has an element the use,
09:11:52 12 attempted use, or threatened use of physical force against the
13 person or property of another, or.

14 B, any other offense that is a felony, and that, by
15 its nature, involves a substantial risk that physical force
16 against the person or property of another may be used in the
17 course of committing the offense.

09:12:12 18 Charge Three, element of intent that the
19 information be used for, or in furtherance of, an activity
09:12:23 20 constituting a federal crime of violence.

09:12:25 21 "Intent" means that the Defendant's purpose in
09:12:31 22 providing the information was that it be employed by the
09:12:35 23 recipients to commit, or to further commission of, or to be used
24 for or in furtherance of, a federal crime of violence, namely
25 the killing of U.S. nationals outside the United States or the

09:12:51 **1** killing of United States officers, slash, employees.

09:12:56 **2** In this case, the government alleges that the
3 federal crime of violence that the defendant intended his
4 information to be used for, or in furtherance of, was either
5 Title 18, Section 2332-A, killing of U.S. nationals outside the
6 United States, or Title 18, Section 1114, killing of any officer
7 or employee of the United States.

09:13:18 **8** Ladies and gentlemen, that completes my reading of
9 the preliminary instructions. In a moment I'll have Amy

09:13:26 **10** retrieve those from you. You not have these with you during
11 the trial. The reason I do that, quite candidly, is to keep
12 you from referring to them during the trial, simply because I'm
09:13:43 **13** concerned that that in turn might generate discussion, or even
14 if it didn't generate discussion, any of you who might look at
15 it might start thinking about what you've heard and seen so far

09:13:56 **16** and trying to see whether it fit or didn't fit into what you
17 have to decide. That's the human impulse and instinct and it
18 makes good and common sense; in any context, it's the way we
19 often go about our business of making our minds up. But as I

09:14:18 **20** emphasized, beginning with voir dire and in these instructions,
21 that's a process that you have to postpone until you've heard

09:14:25 **22** all of the evidence, you've heard my final instructions on the
23 law, and you've gathered together to start deliberations, and

09:14:32 **24** you've started talking through the case with each other and
25 gaining the benefit of the recollections, insights and opinions

1 of your fellow jurors. That's how a jury verdict is composed,
2 and this is the only way that that process can be accomplished.

3 After telling you that, I will tell you, though,
4 that once I give you final instructions that will control your
09:14:55 5 deliberations you will have those with you and, of course, the

6 purpose of that then will be for you to, in fact, refer to those

09:15:02 7 as you determine whether or not the government has met its

09:15:06 8 burden of proof in proving beyond a reasonable doubt any charge

09:15:11 9 or the charges.

09:15:14 10 Counsel, if you'll come up to sidebar for a moment,
11 please.

12 (The following discussion was had at the
13 bench outside the hearing of the jury:)

14 THE COURT: So what's the problem?

15 MR. BOSS: Judge, moments ago we were given this
16 18-page document which I believe is likely a script for Darren
17 Griffin. It is, at least in my estimation, a set of leading
18 questions that he would not otherwise -- that the prosecuting
19 attorney would not otherwise be able to ask the witness. It
20 suggests to the witness the answers.

21 THE COURT: Again, you're going to show this to Mr.
22 Griffin.

23 MR. SOFER: Mr. Griffin will have this with him
24 when he takes the stand. This has been on the exhibit list
25 since March 10. Instead of -- if he has to refer -- this is

1 essentially a summary of notes and the transcripts so that if he
2 has to refresh his recollection, he has something before him.
3 If he does refer to it -- we're not putting this in evidence
4 Judge. If he has to refresh his recollection during the course
5 of his testimony, I didn't want to have Counsel say: Well, what
6 is he looking at? We could do this -- it's no different than
7 any other witness looking at reports if he has to.

8 THE COURT: Who composed these?

9 MR. SOFER: It was composed by the government with
10 some interaction with Mr. Griffin so that he would know
11 essentially, to some extent there are words in there that will
12 help him remember. Again I didn't want to have this -- I
13 didn't want him to refer to notes all of a sudden then Counsel
14 say what is he referring to. We it's marked as an exhibit;
15 we're not putting it into evidence.

16 THE COURT: Did he make notes himself?

17 MR. SOFER: If he made notes they have been
18 incorporated into this. Really it's a document that was
19 create --

20 THE COURT: But were notes made by others, are they
21 part of what is contained --

22 MR. SOFER: That is a summary. All this is, as it
23 says, it's a reference guide or summary of the recordings and
24 reports that pertain to the case.

25 THE COURT: Yeah, but are there notes that others

1 created or prepared that had formed the basis for any of this
2 content?

3 MR. SOFER: I mean the government typed the words
4 on the paper. But they come -- in other words, the first line
5 or second line would be an actual recording. That recording
6 could be hundreds of pages long. There's a very basic -- and
7 the whole document obviously is a very basic summary of each of
8 these dates and incidents. So either there's a very basic
9 description of the recording that was made or there's a very
10 basic description of an FBI report. And all of them come from
11 there. Mr. Griffin has seen these reports or at least he knows
12 of some of the reports. But more importantly, most of this, I
13 would say 98 percent of it, are just summaries of the actual
14 recordings which the government intends to play.

15 We could do this a different way. If Counsel
16 wants to give me these all back and we don't -- every time he
17 has to refresh his recollection I can approach him with a 302,
18 if he doesn't recall, and I'd say would anything refresh your
19 recollection and he says yes, the 302 dated such-and-such or a
20 transcript of 1-D17, and I can approach him with those
21 documents. And we can spend hours and hours having him --
22 having him do it that way. This is an attempt again to make
23 things move quickly, Your Honor, and the reason we gave it to
24 them. They want to cross-examine him on where this came from,
25 what he's using it for, I have no problem on cross. It's not a

1 script. And he's not going to sit there and read from there.

2 I think in a case in which a witness participated in activities

3 over a period of multiple years, it's sort of silly to think --

4 Again, I'll do this another way if Your Honor rules
5 otherwise, but it's going to take us a lot longer to get through
6 it.

7 MR. BOSS: May I have a moment to consult with
8 other co-counsel? This was given to us --

9 THE COURT: The one thing that I would not want is
10 for him to be kind of reading ahead.

11 MR. SOFER: And we're not going to do that, Judge.

12 THE COURT: I think it should be set to one side if
13 he has it up there, can you recall a conversation... Candidly,
14 I would almost prefer, do you recall on or about day X,
15 conversation with Mr. El-Hindi in which the subject of X came
16 up; what do you recall about that conversation?

17 MR. SOFER: We'll do it an even easier way. My
18 plan is to direct his attention to a date, play the actual
19 recording and have him make comments after it. Again, all of
20 this is designed simply to move us along, Judge.

21 MR. HARTMAN: Judge, I just -- when I look at this
22 the first thing I see is a note about what's not heard on the
23 recording, and then what does the color coding mean to Mr.
24 Griffin of this?

25 MR. SOFER: Again, if they want to cross-examine

1 him about any of this...

2 THE COURT: What does it mean?

3 MR. SOFER: What is light is actually from a

4 recording that we had planned to play in court. What is blue

09:22:29 5 in here -- they're just darker -- are things that we're not

6 planning on actually play anything in court but that he might

7 testify about. And, again, he might testify about these things

8 or not.

9 THE COURT: You guys talk. My inclination is to

10 get underway and see how it goes, and then we'll know better

11 whether there's a problem with it.

12 MR. SOFER: Again, he's not going to read from it,

13 Judge.

14 THE COURT: I understand. That's what everybody

15 wants to avoid.

16 MR. BOSS: I like the Court's suggestion that we

17 get underway and see how it goes for the time being.

18 THE COURT: Until we take a break.

19 (End of sidebar.)

20 THE COURT: Thank you for your patience, ladies and

09:22:33 21 gentlemen. I believe that we're ready to get underway with the

09:22:36 22 government's first witness. And who is that witness?

23 MR. SOFER: Darren Griffin, Your Honor.

09:22:42 24 MR. IVEY: Your Honor, at this point I would make a

25 formal request for separation of witnesses.

09:22:50 **1** THE COURT: All parties to monitor the separation
2 of witnesses.
3 MR. SOFER: We do have --
4 THE COURT: The case agents are an exception.
5 MR. SOFER: Understand.
09:23:00 **6** MR. BOSS: A single case agent, Your Honor?
09:23:02 **7** THE COURT: Single case agent.
09:24:20 **8** (The witness was sworn by the clerk.)
09:24:40 **9** THE COURT: I think if you sit about this distance
10 from the microphone, everybody would hear you. Please tell the
11 ladies and gentlemen your name.
09:24:49 **12** THE WITNESS: Darren L. Griffin.
09:24:52 **13** MR. SOFER: May I inquire, Your Honor?
14 THE COURT: Of course.
09:24:55 **15** DARREN GRIFFIN, DIRECT EXAMINATION
16 BY MR. SOFER:
17 Q. Good morning, Mr. Griffin.
18 A. Good morning.
19 Q. Could would you please tell the members of the jury how
20 old you are?
21 A. 42.
22 Q. And where were your born, sir?
23 A. In Lima, Ohio.
24 Q. Can you tell the members of the jury where you grew up?
25 A. Mostly in Toledo, Ohio.

09:25:13 **1** Q. Can you describe basically for the members of the jury

09:25:16 **2** your family situation when you grew up?

09:25:19 **3** A. Dysfunctional at best. It was filled with abuse,

4 physical abuse, and drug abuse.

09:25:31 **5** Q. When you say "drug abuse" was that by other members of

6 your family?

7 A. Yes.

8 Q. Can you tell the members of the jury where you went to

9 elementary school?

10 A. I -- Lagrange Elementary School.

11 Q. Is that here in Toledo?

12 A. In Toledo, Ohio, yes.

13 Q. Where did you go to high school?

14 A. Toledo Woodward.

15 Q. Did there come a time when you joined the United States

09:25:54 **16** military?

17 A. Yes, shortly after leaving high school.

09:25:59 **18** Q. Can you tell the members of the jury why it is that you

09:26:02 **19** joined the United States military?

20 A. At that time, in 1985, that was when I seen a disturbing

09:26:13 **21** trend of drugs, crack specifically, entering the communities,

22 and gangs were forming, and basically I looked at that and I

09:26:29 **23** just made a decision that if I didn't get out of there that I

24 was either going to be dead or on drugs or in jail.

09:26:41 **25** Q. Did you actually join the military before or after you

1 left high school?

2 **A.** It was actually before I left high school. I was in
3 the Delayed Entry Program. I entered that program in October
4 of 1984.

09:26:54 **5** **Q.** Would you give a very basic description to the members

09:26:57 **6** of the jury what it is that the Delayed Entry Program meant?

09:27:02 **7** **A.** It basically means that you process at the MIP station,
8 the entry point, and you make a commitment to the military that
09:27:17 **9** you -- you're going in the military.

09:27:23 **10** **Q.** Did you grow up with people from the Middle East or
11 people that practiced the Muslim faith?

12 **A.** Yes, I did.

13 **Q.** Could you give a basic description to the members of the
14 jury of that situation?

09:27:32 **15** **A.** Growing up, in high school mostly, I lived just a few
16 short blocks from here on Superior Street near Lagrange. And
17 there's a park called St. Francis Park. And all of us, all
09:27:49 **18** colors, ages, religions, we got together and we played sports.

19 That was the biggest thing there, football, basketball,
09:27:58 **20** baseball, you name it. Typical kids' stuff.

21 **Q.** Did you ever have any bad experiences with anyone from
22 the Muslim or Middle Eastern community?

23 **A.** No.

24 **Q.** Do you have any children?

25 **A.** Yes.

1 Q. How many children do you have?

09:28:10 **2** A. Five.

09:28:11 **3** Q. How many of these children are you the biological father

09:28:15 **4** of?

5 A. Three.

09:28:16 **6** Q. Can you tell the members of the jury how old your

7 biological children are?

8 A. 25, 15, and nine.

09:28:23 **9** Q. Can you tell the members of the jury who your

10 15-year-old and nine-year-old live with?

09:28:28 **11** A. They live with their respective mothers.

12 Q. And can you describe -- when you say "respective

09:28:34 **13** mothers", these are children you've had with different women?

14 A. Yes.

15 Q. And can you describe for the jury what your relationship

09:28:41 **16** is like with these two mothers of these two biological children?

17 A. We have a wonderful relationship. They know they are

09:28:50 **18** sisters and we work together as a unit to ensure that -- to make

19 up one family -- not one family, but to know each other as

09:29:02 **20** sisters.

21 Q. Are you presently married?

22 A. Yes.

23 Q. Can you give the jury a basic description of your

09:29:08 **24** present family situation and your relationship with your wife?

09:29:11 **25** A. I've got a wonderful wife. She keeps the kids

1 together, she has an excellent relationship with my daughters'

09:29:27 **2** moms, and she's their stepmother.

09:29:29 **3** **Q.** I want to go back to your military service. Can you

09:29:32 **4** tell us approximately what year it was when you actually entered

5 the United States military?

6 **A.** July of 1985.

09:29:40 **7** **Q.** And what branch of the military did you join?

09:29:43 **8** **A.** The U.S. Army.

09:29:45 **9** **Q.** Can you tell the members of the jury why you joined the

09:29:48 **10** Army as opposed to the Navy, Marine Corps or Air Force?

11 **A.** In October, right before entering the Delayed Entry

09:29:57 **12** Program, I was sitting there evaluating where I was going,

13 football season had just ended, I had injured my knee, and once

14 again, I was just evaluating what was -- where was I going to

15 go, what was I going to do. And a movie came on. It was John

16 Wayne in the "Green Berets".

17 **Q.** Is that what you wanted to be, a Green Beret?

18 **A.** Yeah. I thought that was cool. I wanted to do that.

19 **Q.** Can you tell us when you first entered the Army, where

20 did you go?

09:30:33 **21** **A.** I went to basic training at Fort Jackson, South

22 Carolina.

23 **Q.** Can you tell us basically what basic training was about?

24 **A.** It's basic skills to learn how to move, shoot, and

09:30:46 **25** communicate on the battlefield.

09:30:48 **1** THE COURT: I'm sorry, basic skills...

09:30:51 **2** THE WITNESS: To learn how to move, shoot and

09:30:54 **3** communicate on the battlefield.

09:30:57 **4** BY MR. SOFER:

09:30:57 **5** **Q.** Now, did there come a time when you left basic training

09:31:01 **6** and continued on with training?

7 **A.** Yes. Approximately September of 1985 I went from Fort

8 Jackson, South Carolina, to Fort Gordon in Augusta, Georgia.

9 **Q.** And what did you train for, if anything, at Fort Gordon?

10 **A.** My hard skills. I became a signal channel radio

11 operator.

12 **Q.** You said "hard skill", what does that mean?

13 **A.** Your actual job.

14 **Q.** What happened after you received that training?

15 **A.** I left from there to go to my first permanent duty

09:31:39 **16** station at Fort Lewis, Washington, in Washington state.

17 **Q.** Can you tell us whether there came a time at Fort Lewis,

09:31:48 **18** Washington, when you continued your education somewhere?

19 **A.** Yes. I didn't graduate with my class in high school,

09:32:01 **20** and in talking with the counselors they agreed that if I took

09:32:06 **21** the class that I had failed, that they would send me my diploma.

09:32:14 **22** So shortly after I got to my first duty station, I took that

09:32:17 **23** class and I was sent my diploma.

09:32:22 **24** **Q.** Do you remember approximately when that was?

09:32:25 **25** **A.** January of early -- early 2006.

09:32:28 **1** Q. 2006?

2 A. Excuse me, 1986.

09:32:33 **3** Q. You killed 20 years in two seconds. And how old were
4 you; can you tell the members of the jury how old were you at
5 this time, about?

09:32:43 **6** A. I was 19; I turned 20 while I was there.

09:32:47 **7** Q. Did there come a time when you left Fort Lewis,

09:32:52 **8** Washington, in Washington state?

9 A. Yes, in early January of 1987.

09:32:57 **10** Q. And where did you go?

09:32:59 **11** A. I went to Camp Gary Owen in South Korea.

12 Q. Can you tell the members of the jury basically, and in
13 summary, what your duties were in South Korea?

09:33:14 **14** A. I was a -- at first I was just a radio single channel

09:33:21 **15** radio operator. And then I moved up quickly in the ranks. I

16 became a sergeant and ended up being a chief there. And I also

09:33:32 **17** did -- I was in charge of the secured communications there.

09:33:39 **18** Q. How long did you stay in Korea?

19 A. Approximately three years.

09:33:44 **20** Q. During that period of time you said you were promoted?

21 A. Yes, to sergeant.

22 Q. When did you return to the United States, approximately?

09:33:53 **23** A. About January of 1990.

09:33:57 **24** Q. And where did you go?

25 A. I went back to Fort Lewis, Washington.

1 Q. What did you do there?

09:34:03 **2** A. Well, while I was in Korea, prior to leaving, I was

09:34:09 **3** recruited by a second of the 75th Ranking Battalion. But in

09:34:15 **4** between leaving Korea and getting to Fort Lewis, Panama hadd

09:34:21 **5** just cause because they kicked off and --

6 Q. I'm sorry, what does just cause me an?

09:34:27 **7** A. It was the operation to remove Manuel Noriega in Panama.

09:34:33 **8** Q. Sorry to interrupt. Please continue.

09:34:36 **9** A. And there they had some jump refusal. I was not

10 airborne-qualified at that time, so I couldn't be assigned to

11 that unit. And I walked right out of that unit, walked into

12 Special Forces recruiting.

13 Q. You said in Panama they had "jump refusals". What do

14 you mean by that?

15 A. People that refused to jump out of planes.

16 Q. So the military changed what the rangers had to do?

17 A. Yes, for the non-infantry, yes.

09:35:13 **18** Q. So what did you do next?

09:35:17 **19** A. I walked over and I went to Special Forces recruiting.

09:35:24 **20** MR. SOFER: Your Honor, I believe that Mr. Griffin

09:35:26 **21** would like a little water.

09:35:28 **22** THE COURT: There should be some, if not, in the

23 pitcher right there.

09:36:01 **24** (Discussion had off the record.)

09:36:04 **25** BY MR. SOFER:

09:36:05 **1** Q. Okay. So after you realized that you had to be

09:36:09 **2** airborne-qualified, you said you did what?

3 A. I walked into Special Forces recruiting.

09:36:14 **4** Q. And where was that?

09:36:15 **5** A. There at Fort Lewis, Washington. 1st Special Forces
6 Group.

7 Q. What happened next?

8 A. I basically prepared myself physically and mentally to
09:36:26 **9** go through the Special Forces selection and assessment and
09:36:30 **10** selection.

09:36:31 **11** Q. Did there come a time when you went through Special
12 Forces selection and assessment?

13 A. Yes. In November, December of 1986 -- or excuse me,
09:36:44 **14** 1990.

09:36:45 **15** Q. Did -- can you tell us approximately how many people
16 went for that particular selection?

09:36:52 **17** A. For that rotation was 935 started out.

09:36:58 **18** Q. 935 candidates, would that be the right terminology?

09:37:02 **19** A. Yes, candidates.

20 Q. How many ultimately from those 935 candidates were
09:37:07 **21** selected to the Special Forces?

22 A. 88.

23 Q. Were you one of them?

24 A. Yes.

25 Q. What happened after you were selected to enter the

09:37:14 **1** Special Forces of the United States Army?

2 A. I was attached to Special Forces Command. I was sent

3 back to Fort Lewis to gather my things and report back to Fort

09:37:25 **4** Bragg, North Carolina via airborne school en route.

5 Q. So you were going to come back to Fort Bragg but you had

09:37:36 **6** to go where first?

09:37:37 **7** A. Airborne school.

09:37:38 **8** Q. Where was that?

09:37:39 **9** A. In Fort Benning, Georgia.

09:37:41 **10** Q. Did you go to Fort Benning, Georgia?

11 A. Yes, I did.

12 Q. Tell the members of the jury basically what you learned

09:37:46 **13** there.

14 A. How to jump out of planes into combat.

15 Q. Did you qualify, were you airborne-qualified as you

09:37:53 **16** said?

17 A. Yes.

09:37:54 **18** Q. What happened next?

09:37:56 **19** A. After airborne school I reported to the Special Forces

09:38:01 **20** School House at Fort Bragg, North Carolina.

21 Q. What basically happens at the Special Forces School

09:38:07 **22** House, without getting into any specific details?

23 A. I learned how to become a Green Beret, language school,

09:38:14 **24** and learned how to work on an A-Team, Special Forces A-Team.

09:38:29 **25** Q. Approximately how long did that school house training

1 take place?

2 **A.** Approximately a year.

09:38:39 **3** **Q.** And towards the end of it, was there a particular focus

4 to your training?

5 **A.** Yes.

6 **Q.** What was that?

09:38:49 **7** **A.** Language school.

09:38:51 **8** **Q.** And what language did you train in?

09:38:54 **9** **A.** Persian, Farsi.

10 **Q.** Do you know what part of the world Persian Farsi is

09:39:03 **11** spoken in?

12 **A.** Iran.

13 **Q.** Did you, in fact, receive your Green Beret at the end of

09:39:08 **14** school house training?

09:39:09 **15** **A.** Yes, I did.

09:39:12 **16** **Q.** Approximately December 18 of 1991 did there come a time

17 when you ended up pleading guilty or being charged with passing

09:39:23 **18** a bad check?

19 **A.** Yes.

09:39:25 **20** **Q.** Can you basically tell the members of the jury what

21 happened?

09:39:28 **22** **A.** When you're going through training, it's not all right

23 there at Fort Bragg. And due to just a simple accounting error

09:39:40 **24** I had prepaid some bills, sent some checks out, and one of them

25 bounced.

- 09:39:47 **1** Q. Did there come a time when you pled guilty to something?
- 09:39:51 **2** A. Yes.
- 09:39:52 **3** Q. Do you know what you had to do to deal with this
- 4** particular charge?
- 09:39:58 **5** A. They just told me I needed to pay restitution and a
- 09:40:05 **6** fine.
- 7** Q. Do you remember how much the check was for, about?
- 09:40:09 **8** A. I think it was \$150.
- 9** Q. Did you ever go to court?
- 10** A. No.
- 09:40:14 **11** Q. And about how old were you when this happened?
- 09:40:18 **12** A. Let's see, 23.
- 09:40:22 **13** Q. How would you describe basically to the members of the
- 14** jury your skill level with dealing with your finances back
- 15** during those days?
- 16** A. I was -- I grew up poor, so I took that same thinking
- 17** from when I was a kid straight to the military, and to sum it
- 09:40:44 **18** up: I was financially illiterate, financially irresponsible.
- 09:40:49 **19** And I was a soup/sandwich...
- 20** Q. When you filled out the security questionnaire in 1997
- 21** as part of your background investigation for the United States
- 22** military, did you report this check?
- 09:41:03 **23** A. Yes.
- 09:41:04 **24** Q. Did the military first ask you about it before you
- 09:41:08 **25** reported it?

09:41:09 **1** A. Yes.

2 Q. And did you give them the explanation that you've just
3 described to us?

4 A. Yes.

5 Q. Were you ultimately issued that security clearance?

6 A. Yes.

09:41:20 **7** Q. Did you willfully withhold any information from the
8 military at that time?

9 A. No.

09:41:26 **10** Q. Did there come a time during this same period of time,

09:41:30 **11** approximately the time you were in the school house training,
12 when you ingested drugs?

13 A. Yes, during the language portion.

14 Q. Would you tell the members of the jury basically what

09:41:40 **15** happened there?

16 A. Before going into language school you actually receive

09:41:45 **17** your Green Beret. And I was a heavy drinker back then. And

09:41:51 **18** we went out drinking to celebrate. And I made a bad decision.

09:41:55 **19** Q. And what kind of drug did you take?

20 A. It was acid.

21 Q. Have you -- had you ever taken that drug before?

22 A. No.

23 Q. Have you ever taken it since?

24 A. No.

25 Q. Did you report that on the security questionnaire that

1 you completed in 1997, six years -- five years later?

2 **A.** No, I did not.

3 **Q.** And why is that?

09:42:16 **4** **A.** To -- I knew it was wrong. To protect myself and
09:42:22 **5** others involved.

09:42:24 **6** **Q.** Now, after you got out of school house training, where
09:42:29 **7** did you go?

09:42:30 **8** **A.** My first duty station was Fort Campbell, Kentucky. 5th
9 Special Forces Group.

10 **Q.** How long were you stationed at the 5th Special Forces
11 Group at Fort Campbell, Kentucky?

12 **A.** Basically right after leaving Fort Bragg in late 1992,
13 all the way until my leaving the military in July of 1999.

09:42:58 **14** **Q.** And during this period of time, how much of that time
15 was spent here in the United States?

09:43:04 **16** **A.** About two months. You're gone from the duty station
17 about ten months out of the year.

18 **Q.** Without giving us specifics, can you tell us what
09:43:14 **19** regions you traveled to as part of your work in the Special
09:43:19 **20** Forces of the United States Army?

21 **A.** From the Middle East all the way up to the Far East.

09:43:24 **22** **Q.** Did you complete other kinds of training during this
09:43:27 **23** period of time or schooling?

24 **A.** Yes, I did.

25 **Q.** Can you tell us some of the things that you trained in

1 or schools that you attended?

2 **A.** I attended combat diver's school, SEAL diving supervisor

09:43:43 **3** school.

4 **Q.** Let's go back for a second. What does a -- what is a

09:43:48 **5** "combat diver"? Again, no specifics about your particular

6 training.

09:43:52 **7** **A.** Basically how to infiltrate in the water.

09:43:57 **8** **Q.** Infiltrate where?

9 **A.** To different countries, places.

09:44:03 **10** **Q.** I'm sorry. I cut you off. What were some of the

11 other skills or schools that you went to?

09:44:11 **12** **A.** The SEAL diving supervisor course, desert maintenance

09:44:19 **13** mobility.

09:44:20 **14** **Q.** What is that, "Desert maintenance mobility"?

09:44:24 **15** **A.** Basically if -- you learn how to work on your vehicle if

16 you break down in the desert. You can't pull over to a gas

17 station.

09:44:33 **18** **Q.** Okay. What else?

09:44:36 **19** **A.** The enriched aeronautic diver course, the hyperbaric

09:44:43 **20** chamber, dive medical technician course, SERE school.

09:45:01 **21** **Q.** Without getting into specifics, can you explain to the

09:45:04 **22** jury what SERE is?

23 **A.** Survival, evasion, resistance, and escape.

09:45:10 **24** **Q.** Again, can you tell us basically, without getting into

09:45:15 **25** specifics, what that class or course entails?

09:45:18 **1** **A.** Basically to learn how to survive and evade the enemy,
2 and if captured how to respond.

09:45:29 **3** **Q.** Any other training or schooling that you took during
4 this period of time?

09:45:35 **5** **A.** There were Arabic language courses.

09:45:40 **6** **Q.** Can you tell the members of the jury about what your
09:45:44 **7** level of proficiency in the Arabic language was after you
09:45:48 **8** received that training?

9 **A.** At best, I would say a fourth grade level.

10 **Q.** Were you disciplined ever when serving in the United
09:45:58 **11** States military?

12 **A.** Yes.

09:45:59 **13** **Q.** Can you tell the members of the jury what kind of
09:46:03 **14** discipline you may have received?

15 **A.** I received Article 15's, Uniform Code of Military
09:46:12 **16** Justice.

17 **Q.** Can you tell us what those incidents were?

09:46:16 **18** **A.** The first time was in January of --

19 THE COURT: Excuse me, what is a, quote, Article
09:46:24 **20** 15, what does that mean?

21 THE WITNESS: It's disciplinary actions under the
22 military.

09:46:34 **23** THE COURT: Does it have a special level?

09:46:34 **24** BY MR. SOFER:

09:46:37 **25** **Q.** Is it something that goes on your record potentially?

09:46:40 **1** A. Yes.

2 Q. And do they have -- do you have to go through some sort
09:46:44 **3** of procedure to be cited under that particular article?

4 A. Yes. I guess it would be similar to this where -- but
5 you only appear in front of your commander and your top
09:46:57 **6** non-commissioned officer.

7 Q. Done within the military, it's a non-judicial
09:47:01 **8** proceeding?

9 A. Yes.

10 Q. And what things did you serve an Article 15 for?

11 A. There was only twice. The first time was in January of
09:47:14 **12** -- right before leaving to go to Korea. In 1987. And it was
09:47:22 **13** drinking underage and causing a disturbance.

09:47:28 **14** Q. Basically drinking underage and what -- was there a
15 fight?

16 A. Yes.

09:47:34 **17** Q. Was that fairly common back then in those days with
09:47:37 **18** young men in the military?

19 A. Oh, yes.

09:47:39 **20** Q. And did you receive any other Article 15's?

21 A. Yes. Later while I was in Special Forces I received a
09:47:49 **22** failure to report.

09:47:50 **23** Q. And can you give us, again, a basic description of how
24 what happened?

09:47:55 **25** A. It was a night on the town down in a border town of

09:48:01 **1** Mexico, and we were about an hour away from base. And without
2 any vehicles. And we were at the bar and the taxis decided
3 that they weren't going to drive all the way to where they
4 picked us up at earlier. So those of us that didn't make it
5 back in time, the 3:00 curfew, we got -- I got failure to
6 report.

09:48:33 **7** **Q.** Didn't make it back to the base on time?

8 **A.** Right.

09:48:36 **9** **Q.** Did you use illegal drugs while serving in the Army
10 other than the incident you've already told us about?

09:48:42 **11** **A.** No.

12 **Q.** Were you subject to random drug tests?

13 **A.** Yes.

14 **Q.** Did you ever test positive?

15 **A.** No.

16 **Q.** Did your work in the Special Forces require background
09:48:51 **17** checks and a security clearance?

09:48:53 **18** **A.** Yes.

19 **Q.** During your service with the military, were you ever
09:48:56 **20** denied a security clearance by the United States military?

21 **A.** No.

09:48:59 **22** **Q.** As a result of your military service did you receive any
09:49:03 **23** medals or commendations from the Army?

09:49:04 **24** **A.** Yes, I did.

25 **Q.** I'm going to put Exhibit 1 up on the screen. Can you

09:49:11 **1** tell the members of the jury if you recognize Government's

09:49:16 **2** Exhibit Number 1 for identification?

3 **A.** Yes. That's a picture of me in my uniform.

09:49:21 **4** **Q.** Do you know approximately when that picture was taken?

09:49:25 **5** **A.** It says in '93, 08/16.

09:49:33 **6** MR. SOFER: At this time the government moves

7 Government's Exhibit 1 into evidence.

8 THE COURT: It will be admitted.

09:49:41 **9** MR. SOFER: Go to 2-A.

09:49:47 **10** BY MR. SOFER:

11 **Q.** Can you tell us what is depicted in Government's Exhibit

12 2-A for identification?

13 **A.** That is my uniform without me in it.

09:49:55 **14** **Q.** Do you fit into that uniform anymore?

09:49:58 **15** **A.** Anymore? I don't think so.

09:50:00 **16** **Q.** We all have similar problems. Does this fairly and
17 accurately represent your uniform at approximately the time you

18 left the military?

19 **A.** Yes, with a few minor changes.

09:50:12 **20** **Q.** Minor changes meaning what?

21 **A.** There is not a Bronze Service Star on there and

09:50:27 **22** another -- a SCUBA, a Jordanian SCUBA diver's badge on there.

09:50:34 **23** MR. SOFER: At this time the government moves

24 Government's Exhibit 2-A for identification into evidence.

25 THE COURT: It will be admitted.

09:50:42 **1** MR. SOFER: How about 2-B.

09:50:46 **2** BY MR. SOFER:

09:50:47 **3** Q. Can you tell us basically what's depicted there?

4 A. That represents the 12 years that you serve. Every
09:50:58 **5** three years you get a -- one of these stripes. That's for
09:51:03 **6** serving honorably in the military.

09:51:07 **7** MR. SOFER: Move that into evidence as well, Your
8 Honor. 2-B for identification.

9 THE COURT: It will be admitted.

10 MR. SOFER: 2-C.

09:51:15 **11** BY MR. SOFER:

12 Q. Tell us basically what's depicted there?

13 A. That is my unit designation patch. And my job.

09:51:23 **14** Q. What was your job?

09:51:25 **15** A. Special Forces Green Beret.

09:51:30 **16** MR. SOFER: We move Exhibit 2-C into evidence, Your
09:51:34 **17** Honor.

09:51:34 **18** THE COURT: Admitted.

09:51:36 **19** BY MR. SOFER:

20 Q. Tell the members of the jury, did you go to the Middle
21 East as part of your military service?

22 A. Yes, of those ten months out of the year being gone,
09:51:44 **23** most of that time we spent in the Middle East.

24 Q. And were you involved in combat operations?

25 A. Yes.

09:51:50 **1** Q. Without giving us any detail, can you tell the jury some
2 of the conflicts that you participated in?

09:51:56 **3** A. Desert Storm and Desert Shield.

09:52:00 **4** Q. Are you able to disclose all of the activities and
5 training that you received during your service in the Special
09:52:07 **6** Forces Services of the U.S. Army here in open court?

7 A. No.

8 Q. Did there come a time when you left the United States
9 military?

10 A. Yes.

11 Q. Can you tell the members of the jury approximately when
12 that was?

09:52:16 **13** A. July of 1999.

09:52:19 **14** Q. Tell the members of the jury why it is that you left.

09:52:23 **15** A. I sustained an injury in November of 1998 on an airborne
09:52:30 **16** operations. It was at night, rough terrain, high winds in a
17 foreign country.

09:52:37 **18** Q. And can you tell the members of the jury basically what
19 the nature of your injury was?

09:52:42 **20** A. I injured my left knee.

09:52:46 **21** Q. Do you still suffer from the effects of that injury
22 today?

23 A. Yes.

24 Q. Can you give us a basic description of what that injury
25 is, your understanding of that injury?

1 A. I basically have no cartilage in my left knee. I have
2 bone on bone contact.

09:53:07 **3** Q. Can you tell the jury why it is you have bone on bone in
09:53:10 **4** your knee?

09:53:11 **5** A. While performing those duties, I had to walk
09:53:20 **6** approximately 25 miles to infiltrate. And during that time,
7 once I injured it on the jump, I was given a shot of cortisone
09:53:34 **8** and it being not a training mission, I had to go on.

09:53:40 **9** Q. Why did this injury result in you having to leave the
10 Special Forces of the United States Army?

09:53:45 **11** A. Because I couldn't recertify as a Special Forces
09:53:51 **12** airborne-qualified jumper.

13 Q. When you say "recertify", what do you mean by that?

14 A. I couldn't perform my duties as a Green Beret. I
09:54:02 **15** couldn't do the endurance event followed by the specific tasks
16 you have to do after the endurance event.

09:54:15 **17** Q. Were you discharged from the United States Army as a
18 result of this injury?

19 A. Yes, in July of 1999.

20 Q. Can you tell the jury what kind of discharge you
21 received?

22 A. Honorable.

09:54:24 **23** Q. And are you a disabled veteran?

24 A. Yes.

09:54:28 **25** Q. Did you want to leave the United States Army, Mr.

09:54:31 **1** Griffin?

09:54:31 **2** **A.** No.

3 **Q.** Why not?

4 **A.** It was my life.

09:54:36 **5** **Q.** Were you given a pension?

09:54:39 **6** **A.** I received a severance pay and I received a monthly
09:54:47 **7** stipend.

8 **Q.** How much of a severance pay and how much of a monthly

09:54:54 **9** stipend do you get?

09:54:55 **10** **A.** I received about 60,000 dollars and the monthly check is
11 \$117.

09:55:00 **12** **Q.** Do you know how far away you were when you left from

09:55:03 **13** receiving what amounts to a full pension or a significant

09:55:06 **14** pension?

15 **A.** Six years.

09:55:09 **16** **Q.** And were you also close to being promoted when you left
17 the Army?

09:55:13 **18** **A.** Yes.

19 **Q.** What was your final rank when you left the United States
20 military?

21 **A.** Sergeant First Class.

09:55:19 **22** **Q.** Would you give the jury a basic description, Mr.

23 Griffin, of how you were feeling when you were discharged?

24 **A.** I was lost.

09:55:28 **25** **Q.** Can you explain why?

- 09:55:41 **1** A. That was my stability.
- 09:55:46 **2** Q. And did have you plans when you left?
- 09:55:51 **3** A. Not really.
- 09:55:53 **4** Q. What did you do when you separated from the Army?
- 09:55:58 **5** A. I was hired at UPS to be a package handler, and then a
- 09:56:09 **6** supervisor.
- 09:56:10 **7** Q. And did you have any money at that time?
- 8** A. Yes. I had that severance pay.
- 09:56:18 **9** Q. You said you were hired at UPS in what capacity?
- 10** A. First as a package handler here in Toledo, Ohio, and
- 11** then as a part-time supervisor in Canton, Ohio.
- 09:56:32 **12** Q. And approximately when was it that you went to Canton,
- 09:56:36 **13** Ohio?
- 14** A. In January of 2000.
- 15** Q. And how long did you stay in Canton, Ohio,
- 09:56:44 **16** approximately?
- 17** A. About a year.
- 09:56:45 **18** Q. Did you go to school during that time?
- 19** A. Yes, I went to Stark State School of Technology.
- 20** Q. Did you receive college credits during that period of
- 21** time?
- 22** A. Yes.
- 23** Q. Approximately how many college credits did you receive
- 09:57:00 **24** during 2000?
- 09:57:01 **25** A. 12, around 12.

09:57:07 **1** Q. Did there come a time when you left school in Canton?

09:57:10 **2** A. Yes.

09:57:12 **3** Q. Where did you go?

4 A. I moved back here to Toledo, Ohio.

09:57:20 **5** Q. And why did you do that?

6 A. Basically to start my business plan for a security
7 company.

09:57:28 **8** Q. How did you survive financially during that period of

09:57:32 **9** time?

10 A. I still had some of the severance pay left.

09:57:38 **11** Q. Were you paying child support after you left the Army?

09:57:41 **12** A. Yes.

09:57:42 **13** Q. Were you always able to keep current in your child

09:57:45 **14** support payments?

09:57:46 **15** A. No.

16 Q. Can you explain that to the members of the jury?

17 A. I basically -- I just didn't go through a child support

09:57:55 **18** agency. I went -- dealt directly with the mothers to provide

19 for my kids.

09:58:01 **20** Q. Did you ever have any judgments rendered against you, to

21 your knowledge?

09:58:06 **22** A. No.

23 Q. Did you ever go to court for not paying child support,

24 to your recollection?

25 A. No.

09:58:11 **1** Q. Did there come a time when you volunteered to work for
2 the United States Drug Enforcement Administration, also known as
09:58:19 **3** the DEA?

4 A. Yes.

5 Q. Approximately when was that?

6 A. Around April of 2001.

09:58:26 **7** THE COURT: When had you returned to Toledo from
8 Canton approximately?

09:58:33 **9** THE WITNESS: In January 2001. Early 2001.

09:58:38 **10** BY MR. SOFER:

09:58:39 **11** Q. Can you tell us basically how is it that you ended up
09:58:42 **12** volunteering for working for the DEA?

13 A. I was at a bar, the Sports Zone bar here in Toledo,
14 Ohio. And I was with friends and family members. And a
15 couple of drug dealers had came in and they started a fight with
09:59:00 **16** me and my friends and family. And for the wrong reasons I
17 basically went into the -- went into the DEA and said: Hey,
09:59:15 **18** what can I do?

19 Q. You say the "wrong reasons". What is that?

20 A. It was probably selfish. I wanted to get revenge.

21 Q. And were you paid for your work at the DEA?

22 A. Yes.

09:59:26 **23** Q. Do you recall how much?

09:59:28 **24** A. \$21,000.

09:59:31 **25** Q. And that \$21,000 was spread out over approximately how

1 long, do you know?

09:59:38 **2** **A.** A year and a half.

09:59:40 **3** **Q.** Do you remember how your pay was broken down over that

09:59:43 **4** approximately year period of time?

09:59:46 **5** **A.** \$800 a week.

09:59:49 **6** **Q.** Without telling us the names of any of the people that

09:59:52 **7** were involved, can you basically tell us what you did?

09:59:55 **8** **A.** I bought drugs.

09:59:58 **9** **Q.** And did you do that under the guidance of the Drug

10:00:02 **10** Enforcement Administration?

10:00:02 **11** **A.** Yes.

12 **Q.** Did you yourself use drugs during this time?

13 **A.** Yes.

10:00:06 **14** **Q.** Will you tell the members of the jury what drugs you did

15 use?

10:00:09 **16** **A.** Marijuana and cocaine.

10:00:11 **17** **Q.** Can you give us an approximation of how often you used

18 cocaine during this period of time?

19 **A.** About once a week.

20 **Q.** And approximately how long or how often did you use

21 marijuana during this period of time?

10:00:27 **22** **A.** The same.

10:00:28 **23** **Q.** Can you describe for the jury how and why this happened?

10:00:33 **24** **A.** One began as my cover and credibility. Two, because of

25 pressure. And three, sadly, I began to enjoy it and for

10:00:47 **1** recreation.

2 Q. When you say "for cover", what do you mean by that?

3 A. I had to be a drug dealer.

10:00:55 **4** Q. Did you tell the DEA agents with whom you were working
5 that you used cocaine?

10:01:00 **6** A. No.

7 Q. Why not?

8 A. I knew it was wrong.

10:01:04 **9** Q. Did they tell you that you were not to violate the law
10 in this way while you were working for the DEA?

11 A. Yes.

12 Q. Did they ever specifically ask you whether you used

10:01:14 **13** drugs?

14 A. No.

10:01:15 **15** Q. Did you ever sell any drugs during the time that you
16 worked for the DEA?

17 A. Yes.

10:01:20 **18** Q. Other than that which they had told you, you were
19 working with them on a particular sale?

20 A. Yes.

10:01:27 **21** Q. Can you describe that for the members of the jury?

22 A. There was a rumor going around that I worked for the
23 police or the DEA. And I wanted to put some misinformation out

10:01:41 **24** there, so I bought some prescription pills from someone that I

10:01:48 **25** knew would go and repeat it. And I then in turn sold those

10:01:52 **1** pills to someone that I knew that would repeat it.

10:01:55 **2** **Q.** Did you make any money from that deal that you recall?

3 **A.** No.

10:02:00 **4** **Q.** Is that the only time you sold drugs?

5 **A.** Yes.

6 **Q.** Is that the only time you've ever sold drugs in your
10:02:06 **7** life?

10:02:09 **8** **A.** Yes.

10:02:11 **9** **Q.** Did the DEA give you permission for this particular sale
10 of these pills?

10:02:15 **11** **A.** No.

10:02:17 **12** **Q.** Did you ever have to testify in court as a result of
13 your work with the DEA?

14 **A.** No.

10:02:23 **15** **Q.** Did you have any other jobs while you were working for
16 the DEA?

17 **A.** No.

10:02:29 **18** **Q.** Did there come a time when you participated in any
10:02:33 **19** programs or classes when you were working for the DEA?

20 **A.** Yes, I attended the assets school here in Toledo, Ohio,
21 learning how to write a business plan for my security company.

22 **Q.** And again approximately how long did you work for the
23 DEA?

10:02:49 **24** **A.** About a year and a half.

10:02:56 **25** **Q.** Did there come a time when you transitioned into working

1 for the Federal Bureau of Investigation, known as the FBI?

2 **A.** Yes.

10:03:05 **3** **Q.** Can you describe for the members of the jury basically
4 how that happened?

5 **A.** Shortly after 9/11 I was approached by my contact at the
10:03:15 **6** DEA. And he asked me if I wanted to be a part of the task
7 force.

8 **Q.** When you said "be a part of the task force", did he mean
9 you were going to become an agent?

10 **A.** No, to my understanding it was to be an informant.

11 **Q.** And do you remember meeting an FBI agent shortly
12 thereafter?

13 **A.** Yes.

14 **Q.** Can you tell the members of the jury who that was?

15 **A.** Bill Radcliffe.

10:03:45 **16** **Q.** You describe for the jury basically the transition

10:03:48 **17** process that you went through?

10:03:51 **18** **A.** To what I believe it was a vetting process. I was
19 given a task to see if I could perform it, and was questioned.

20 I had to take a polygraph test. And perform certain
10:04:12 **21** information gathering.

10:04:16 **22** **Q.** Okay. Was there a time when you actually were working
23 for both the DEA and the FBI?

10:04:24 **24** **A.** Yeah.

25 **Q.** Can you basically describe how that happened for the

1 members of the jury?

10:04:29 **2** **A.** From basically October of 2001 to the following year,

10:04:38 **3** approximately August, I still gathered information for the DEA

4 and then, while transitioning to the FBI, began to gather

5 information.

10:04:55 **6** **Q.** Did there come a time when the DEA stopped paying you

7 for your work and the FBI started paying you for your work?

8 **A.** Yes. I believe it was August of 2002.

10:05:06 **9** **Q.** When approximately -- I'm sorry.

10 Did you, yourself, undergo some personal

10:05:13 **11** transformation during the fall of 2001 through middle or early

10:05:19 **12** 2002?

10:05:20 **13** **A.** Yes.

10:05:22 **14** **Q.** Can you explain that to the members of the jury?

10:05:25 **15** **A.** I had to become -- change my identity from being a drug

10:05:35 **16** dealer to creating my new identity as an Islamic extremist.

17 **Q.** Did you personally also go through your own personal

10:05:47 **18** transformation?

10:05:49 **19** **A.** Yes.

10:05:50 **20** **Q.** Can you describe that for the members of the jury?

10:05:53 **21** **A.** On -- basically 9/11 -- or before 9/11, I was just

10:06:12 **22** absorbed in myself, I was -- I fell into the thing that I had

10:06:19 **23** feared 14, 15 years ago as doing drugs or, you know, being a

10:06:27 **24** part of it. And on 9/11 I was awakened by a family member, and

10:06:37 **25** they simply said, are you ready to go back in? And I didn't

10:06:45 **1** understand. He told me to turn on the TV. And the second
10:06:51 **2** plane had hit the towers. And I didn't have to wait for an
10:07:02 **3** explanation. I knew, I knew who was responsible because I had
10:07:08 **4** been in the military. I knew who tried to take it down before,
5 and I basically had to make a decision. Was I going to
6 continue to be selfish and continue to hurt people and do
7 negative things and be a part of the problem instead of the
10:07:39 **8** solution, or was I finally going to stand for something?

10:07:50 **9** And I simply went and looked in the mirror. I did
10:07:57 **10** something I hadn't done in a long time. I took a good look.

10:08:03 **11** And I --

12 Q. Did you change your attitude, Mr. Griffin?

13 A. Yes.

10:08:26 **14** Q. Did the DEA coming to you thereafter, was that a good
15 thing or a bad thing about having you go work for the FBI, or

10:08:35 **16** neither?

17 A. It was -- I would consider it a good thing.

10:08:40 **18** Q. Did you continue to be paid during this period of time?

19 A. Yes.

20 Q. And do you remember how much you were paid by the FBI
21 when you first started working for them?

10:08:54 **22** A. \$4,000 a month.

10:08:58 **23** Q. Did that amount change over time?

24 A. Yes.

10:09:02 **25** Q. How long have you been receiving payments from the FBI

10:09:05 **1** all together?

10:09:07 **2** **A.** From August of 2002 until present.

10:09:16 **3** **Q.** And do you know approximately how much money you've been
4 paid not counting certain expenses during the approximately six
5 years that you've been working for the FBI?

10:09:28 **6** **A.** About 350,000 approximately.

7 **Q.** Again, is that over the six years you've been working
8 for them?

9 **A.** Yes.

10 **Q.** It's a relatively simple equation. I don't know if I
11 can do it though. Do you know how much that amounts to every
12 year?

10:09:49 **13** **A.** About 56,000 a year.

10:09:52 **14** **Q.** Can you tell the members of the jury what -- whether
15 some of that money was spent on things that were related to your
16 work for the FBI?

17 **A.** Yes. I had to create a whole new identity with that.

10:10:08 **18** I had to move. I was --

19 **Q.** Were you asked to move to a particular place?

10:10:13 **20** **A.** Yes. I was asked to get a place downtown Toledo.

21 **Q.** And did that cost more money than the place you were

10:10:22 **22** living in at the time?

10:10:23 **23** **A.** Yes.

24 **Q.** Can you tell the members of the jury, after 9/11 did you
25 have other employment opportunities other than working for the

1 FBI?

10:10:31 **2** **A.** Oh, yes.

3 **Q.** Can you explain that to them?

10:10:35 **4** **A.** I could have worked for numerous companies, one being

10:10:43 **5** Blackwater, I could have just simply made a phone call and went
6 there with my skills.

7 **Q.** What kind of company is Blackwater?

8 **A.** It's a security equipment and protection -- security
9 company.

10:11:00 **10** **Q.** Are they operating any particular places around the
11 world, to your knowledge?

12 **A.** Yes. They operate in all areas of the world,
10:11:12 **13** particularly they would have been working in combat zones, the
14 war zones.

15 **Q.** Can you give us an idea how much money, if you know, you
16 may have been able to garner after 9/11?

17 THE COURT: I'm sure there will be a basis for
18 this. I don't see a basis. It seems somewhat speculative to
19 me.

10:11:34 **20** MR. SOFER: Okay.

10:11:39 **21** BY MR. SOFER:

10:11:40 **22** **Q.** The money that you've made during the course of your
23 time at the FBI, have you paid taxes on that money?

24 **A.** No, I have not.

25 **Q.** Can you tell the members of the jury why that is?

1 A. I didn't receive a W-2 or a 1099 from the FBI , and the
2 information I had at the beginning when I contacted the IRS is
3 that I had to somehow verify where these -- this money was
10:12:08 4 coming from. And I just couldn't pay taxes. And even up to
5 this point it's still a gray area, and it's just recently been
6 told to me, since my name has come out in the paper, I can
10:12:23 7 actually say what I did, that I can get the taxes taken care of
8 and I can -- with help from the FBI , they can verify that, yeah,
9 this is from payments from them, and not anything else.

10:12:42 10 Q. How were you paid; were you paid by check, cash or
10:12:46 11 electronic transfer?

12 A. Cash.

10:12:48 13 Q. During the time you've worked for the FBI , were you able
14 to work another job?

10:12:55 15 A. No, I was not.

16 Q. Tell the members of the jury why that is.

17 A. I had to be available to them 24 hours a day, 7 days a
18 week.

10:13:06 19 Q. During the time you worked for the FBI , have you ever
20 used any illegal drugs?

10:13:12 21 A. Yes.

22 Q. Can you tell the members of the jury what those drugs
23 were and approximately how many times?

10:13:19 24 A. It was marijuana.

10:13:20 25 Q. And how many times have you used marijuana during the

1 time you worked for the FBI?

2 **A.** Just a few.

10:13:27 **3** **Q.** Did you ever smoke marijuana while performing your work
4 with the FBI?

10:13:31 **5** **A.** No.

6 **Q.** Did you ever use any illegal drugs whatsoever while
10:13:35 **7** performing your actual work for the FBI?

10:13:37 **8** **A.** No.

9 **Q.** Can you tell the members of the jury basically what your
10:13:42 **10** understanding is of what you were asked to do by the Federal
11 Bureau of Investigation?

12 THE COURT: Why don't we take a break now?

10:13:49 **13** MR. SOFER: This would be a good spot, Your Honor.

14 THE COURT: Ladies and gentlemen, we'll try to
15 resume between 25 after and half past. Don't talk about the

10:13:58 **16** case, keep an open mind and we'll see you shortly. If you want
17 to leave your notebooks on the chair, that's fine. It's up to

10:15:07 **18** you.

10:17:12 **19** (Recess taken).

10:36:16 **20** THE COURT: Ladies and gentlemen, are you able to
21 hear okay?

10:36:22 **22** THE JUROR: Yes.

23 THE COURT: I'll let the far corner be the auditor,
24 so to speak.

10:36:28 **25** One thing that I neglected to mention to you, I'm

1 sure that you are fully aware of it in any event, if you happen
2 to see any of us who has anything to do with the case in the
10:36:44 3 corridor, the elevator, or whatever, don't be too offended if
10:36:49 4 we're kind of brusque and don't give you a big hello and start
10:36:54 5 chatting. I don't want anybody to think there's somehow
10:36:59 6 inappropriate contact with any of us involved in the case or any
7 of us and any of you. So we don't mean to be rude or impolite,
8 it's just we want to avoid any appearance of anything
10:37:13 9 inappropriate.

10 Mr. Griffin, you understand you remain under oath.

11 Mr. Sofer, you may continue.

12 MR. SOFER: Thank you, Your Honor.

10:37:22 13 BY MR. SOFER:

10:37:23 14 Q. Mr. Griffin, can you tell the members of the jury what
10:37:26 15 your basic understanding was of what it is that you were asked
16 to do for the FBI?

10:37:31 17 A. To gather information.

10:37:35 18 Q. And approximately when did that start?

10:37:42 19 A. October, November time frame of 2001.

10:37:50 20 Q. And what kind of information are we talking about here?

10:37:55 21 A. Information on threats to the United States.

10:38:00 22 Q. And were you asked to look for threats to the United

10:38:05 23 States in particular places, communities, areas; what kind of

10:38:11 24 threats were you asked to look for?

25 A. In the Muslim community.

1 Q. And were there things that you had to do that needed to
10:38:22 2 be done in order for you to gather the kind of threat

10:38:25 3 information that you're describing?

10:38:27 4 A. Yes. I had to set up an identity that I was an Islamic
10:38:35 5 extremist.

10:38:36 6 Q. And did this extremist identity include concepts of
10:38:45 7 violence?

8 A. Yes.

9 Q. Can you describe what you mean by that to the members of
10:38:49 10 the jury?

10:38:49 11 A. Violence to the United States. And that violence was
12 either going to be here in the United States or abroad.

13 Q. And what kind of violence are we talking about?

14 A. To injure, kill, or maim.

15 Q. And was this violence connected somehow to the extremist
10:39:14 16 views?

17 A. Yes.

18 Q. Can you describe how?

19 A. Could you rephrase the question?

20 Q. You said that you had to come up with an identity
21 which -- in which you had extremist views that relate to

10:39:33 22 violence. How did the extremist views connect to violence?

10:39:42 23 A. Basically the extremists, they injure, kill, or maim in
24 the name of religion.

10:39:50 25 Q. Did you have concerns about what the FBI was asking you

10:39:54 **1** to do?

2 **A.** No.

10:39:57 **3** **Q.** Can you tell us again what your general thoughts were

4 acting in this capacity after 9/11?

10:40:03 **5** **A.** That I had to make a decision that was I going to go

6 stay selfish and go work a job that I knew that was imminent

10:40:15 **7** overseas making \$1,000 a day or was I finally, for once in my

10:40:20 **8** life, going to be self-less, and just like the oath I took in

9 the military, to protect this country from foreign and domestic

10:40:33 **10** enemies. So it got me back into the thick of things.

10:40:40 **11** **Q.** Did you have to learn about the Muslim faith in order to

12 blend into the community that you were asked to work in?

13 **A.** No, I had learned it prior when I was in the military.

14 **Q.** And can you give us some basic ideas of what you learned

15 and what your prior experiences were?

10:40:57 **16** **A.** The culture and the customs and how the religion and how

17 it's separated.

18 **Q.** Are you a Muslim today?

19 **A.** No.

20 **Q.** What religion do you practice today?

10:41:11 **21** **A.** I consider myself a Christian but, more importantly, I

22 have a personal relationship with Jesus Christ.

10:41:19 **23** **Q.** During your work with the FBI did you ever pretend to

24 convert to Islam?

25 **A.** Yes.

10:41:25 **1** Q. Did you truly convert?

2 A. No.

3 Q. Do you speak Arabic?

10:41:30 **4** A. I have a working knowledge, first to second grade level
10:41:38 **5** of Arabic.

10:41:40 **6** Q. Did you do anything further beyond your military

10:41:44 **7** training to learn Arabic in order to establish your new

10:41:49 **8** identity?

9 A. Yes. Part of my identity to build rapport and gather
10 information is one of the first things I did is I started to
11 study Arabic in the Mosque and take classes also.

10:42:07 **12** Q. How would you describe your -- I think you said a first
13 or second grade level of understanding of Arabic. Is that

10:42:16 **14** approximately right?

15 A. Well, that would be the -- on the reading and writing
16 side of things.

17 Q. What about your understanding of what people were
18 speaking, approximately?

19 A. I could follow conversations, about every other to third
10:42:33 **20** word. I know the gist of most conversations.

21 Q. Not fluent in any way?

22 A. No.

10:42:40 **23** Q. Did you change your name as part of creating this new
10:42:44 **24** identity?

25 A. Yes.

1 Q. And what name did you adopt?

2 A. Bilal.

10:42:48 **3** Q. Do you know where the name Bilal comes from?

10:42:51 **4** A. He was the companion of the Prophet Mohammad.

10:42:56 **5** Q. Did you change your address?

10:43:00 **6** A. Yes.

10:43:02 **7** Q. And where did you move?

10:43:04 **8** A. I moved to the Lasalle building here in downtown Toledo.

9 Q. A few blocks away from the courthouse here?

10 A. Yes.

10:43:12 **11** Q. I think you said earlier you had been asked to move

10:43:16 **12** downtown by the FBI?

13 A. Yes.

10:43:18 **14** Q. Can you tell the members of the jury what else you

15 basically had to do to establish your new identity, what other

10:43:24 **16** things you changed?

10:43:25 **17** A. I had to cut ties with friends, family, grow a beard,

18 wear the garb.

10:43:33 **19** Q. When you say "the garb", what do you mean?

20 A. The dress, the formal traditional dress of the Arab

10:43:44 **21** culture.

22 Q. Anything else you had to do?

10:43:49 **23** A. I had to assume the whole identity of Islamic extremist.

24 Q. Did you begin working somewhere as part of establishing

25 this new identity?

10:44:00 **1** A. Yes. Shortly -- I would say in the fall of 2002 I had
10:44:14 **2** worked at a local charity.

3 Q. Was that a Muslim charity?

4 A. Yes.

5 Q. Islamic-based charity?

6 A. Yes.

10:44:23 **7** Q. Can you tell us how long it took to establish this cover
8 as you described?

9 A. There was a transition between the -- while I was
10:44:33 **10** working with the DEA and the FBI, but I began my cover and
11 identity immediately starting in -- right after 9/11. And it
12 took approximately a few years to establish it, get my story out
13 there.

10:44:56 **14** Q. Who did you tell, if anyone, about the true purpose of
10:45:01 **15** doing these things?

10:45:03 **16** A. Only -- no one in the beginning, but later, my wife.

10:45:10 **17** Q. Can you describe basically for the jury whether you took
18 any security precautions during your course of working for the
19 FBI?

20 A. I took the best measures as I could. Being from the
10:45:25 **21** community and growing up as a child here in Toledo, there's
10:45:29 **22** certain things that were -- would be impossible for me to do
23 because I'm from the community, I grew up here, so I couldn't
24 assume a totally different name or anything besides my Islamic
25 name because it just wouldn't work.

- 10:45:48 **1** Q. Did you develop a code name for yourself?
- 2** A. No, I didn't.
- 3** Q. Did someone else come up with a code name for you?
- 4** A. Yes.
- 5** Q. An FBI agent?
- 6** A. I assume.
- 10:46:00 **7** Q. Were you ultimately told what your code name was by the
- 8** FBI?
- 9** A. Yes.
- 10:46:06 **10** Q. Do you know who told you that?
- 11** A. Bill Radcliffe .
- 12** Q. What was your code name?
- 13** A. Supernatural.
- 10:46:18 **14** Q. How is the code name used?
- 10:46:20 **15** A. Basically to keep my name secure and known that I was
- 10:46:29 **16** working for the FBI .
- 10:46:36 **17** Q. Were you concerned that someone might see you working
- 10:46:40 **18** with the FBI whom you knew here from Toledo?
- 10:46:44 **19** A. That's always at least part of your mind, if you're
- 20** security conscience when you have a different identity.
- 10:46:58 **21** Q. Did you own a firearm or firearms during this period of
- 22** time?
- 23** A. Yes.
- 10:47:02 **24** Q. Did the security situation make things difficult for you
- 10:47:06 **25** on a day-to-day basis in your personal life?

1 A. Oh, yes.

10:47:13 **2** Q. Can you tell the members of the jury what, if anything,
3 you did to maintain secrecy when you were communicating with
10:47:20 **4** people in the FBI?

5 A. I would not use their name, their actual name. I would
6 use words like boss, for example.

10:47:32 **7** Q. Were you always able to maintain complete security
10:47:36 **8** during the time and years you worked for the FBI?

9 A. No.

10 Q. Can you give us some examples of why it was you were not
11 able to maintain complete security?

12 A. Just impossible. When -- if I was with my family
10:47:52 **13** members and I would get a call from a person of interest, if I
14 was with a person of interest and another person of interest
15 called me, it was just -- couldn't do it. I had to do the best
10:48:09 **16** I could.

10:48:12 **17** Q. Could you describe for the jury what your general plan
10:48:15 **18** was to collect information about possible threats here in the
10:48:20 **19** Toledo area?

20 A. Basically put my cover story down that I was an ex-Green
10:48:27 **21** Beret, disenchanted with the United States, got out due to an
22 injury, and I did not agree with their foreign policy, and I
23 took the identity of an Islamic extremist.

10:48:46 **24** Q. Did you weave together things that were true and things
25 that were not true?

1 A. Yes.

10:48:52 **2** Q. Can you describe that for members of the jury?

3 A. I would use, of course, my name, my Social Security
4 number.

10:48:59 **5** Q. Why would you use your real Social Security number, as
6 an example?

10:49:04 **7** A. Once again, I'm from the community, and if any
10:49:10 **8** documentation from getting my Social Security number -- I did
10:49:16 **9** travel back here to Toledo, Ohio; I had friends. It's just one
10:49:21 **10** of those things you couldn't hide. Plus I would have to -- if
11 I did pick another Social Security number, I would have to
12 remember that Social Security number. And any time you start
13 adding things, you're bound to forget one of them.

10:49:36 **14** Q. Did you have to say things that were not true to
10:49:39 **15** establish your cover?

10:49:40 **16** A. Yes.

17 Q. Did you lie to people?

18 A. Yes.

19 Q. Tell the members of the jury why that was.

10:49:44 **20** A. Because I very well couldn't, say, walk into and gather
21 information by walking up to a person, hi, I'm an ex-Green
22 Beret, I'm working for the FBI, and I want to know if, you know,
23 what do you know about the extremist activities in the area.

10:50:09 **24** Q. When you began working for the FBI, did the FBI actually

10:50:13 **25** ask you to focus your efforts on anyone in particular?

1 A. Yes.

2 Q. Without telling us who those individuals were, were any
10:50:20 **3** of those people Mohammad Amawi, Wassim Mazloum or Marwan
4 El-Hindi?

10:50:25 **5** A. No.

10:50:26 **6** Q. When you first started, how did you know where to go and
7 what to do?

8 A. I was guided, told by the FBI , and I also checked the
10:50:39 **9** Toledo area, did the demographics.

10:50:45 **10** Q. Did you take notes during the time you were collecting
10:50:48 **11** information?

10:50:52 **12** A. Just very few, basically maybe a license plate number,
13 maybe a name or a phone number. But not during operations, just
10:51:07 **14** basically once I departed from the people of interest.

10:51:10 **15** Q. Okay, and why did you not take notes?

16 A. Basically because it would have been a security risk if
10:51:20 **17** I would have kept notes after every event, and put them in my
18 car, in my apartment, if those two things would have got broken
10:51:33 **19** into I would have been exposed.

10:51:39 **20** Q. Without telling us the specifics with respect to the
10:51:44 **21** equipment, can you give us a basic description of what equipment
22 the FBI provided you with in order to perform your information
10:51:50 **23** gathering?

24 A. Recording devices and video recording devices and a
10:52:00 **25** laptop.

1 Q. Did you hide or conceal these devices on your person?

2 Did you ever hide the devices in clothing, or what would you

3 hide them in basically?

10:52:14 **4** A. Anywhere I thought I could get away with it and
5 accurately record the events taking place.

10:52:21 **6** Q. To your knowledge did any of the people that you

10:52:24 **7** recorded know that you were recording your conversations with
8 them?

10:52:27 **9** A. No.

10:52:28 **10** Q. Did you ever have an incident where you dropped the
11 device or you noticed that it was visible to anyone you were
10:52:35 **12** recording?

13 A. No.

10:52:36 **14** Q. Do you know if you were given a cell phone by the FBI?

10:52:40 **15** A. Yes.

10:52:43 **16** Q. Did they actually hand you the cell phone or did they
17 ask you to --

18 A. No, they asked me to purchase a cell phone out of the
19 monthly stipend.

10:52:54 **20** Q. Do you recall the number that was assigned to that cell
10:52:58 **21** phone while you were working for the FBI?

22 A. (419)787-3906.

10:53:06 **23** Q. Do you recall ever being given a satellite phone by the
24 FBI?

10:53:11 **25** A. Once again, I purchased it out of the monthly stipend.

10:53:18 **1** Q. Do you remember the number assigned to that device?

2 A. I do not.

10:53:22 **3** Q. Would anything refresh your recollection?

10:53:24 **4** A. Maybe a phone bill.

10:53:28 **5** THE COURT: You can simply suggest the number to

6 him, that's fine.

7 MR. SOFER: I'm sorry, Your Honor?

10:53:33 **8** THE COURT: You can suggest the number to him.

9 MR. SOFER: I could but then I'd have to remember

10 it, too. Just one moment, Your Honor, 126-A.

11 Your Honor, can we approach for one second? I can

12 put it up on the screen but it will be in front of the jury.

13 Is that acceptable to Counsel?

10:53:53 **14** MR. HARTMAN: If it's just the number, yeah.

15 MR. SOFER: Well, it's the bill.

10:53:58 **16** MR. HARTMAN: That's fine.

10:53:59 **17** MR. SOFER: 126-A, please.

10:54:02 **18** BY MR. SOFER:

10:54:02 **19** Q. I don't know if you can see that. Is there a number on

20 there which helps you refresh your recollection as to what the

21 number of the actual satellite phone was?

22 A. Yes.

10:54:16 **23** Q. Can you tell the members of the jury what that number

10:54:19 **24** was. Can you circle it? Try your best John Madden

10:54:32 **25** interpretation. Can you read that?

1 A. 8821651194023.

10:54:44 **2** Q. Were you also --

10:54:46 **3** I think you said you were also given a laptop

10:54:48 **4** computer?

5 A. Yes.

6 Q. Do you remember who gave that to you?

10:54:51 **7** A. Shannon Coats.

8 Q. Who is Shannon Coats?

9 A. He's an agent at the FBI.

10 Q. Is he one of the other people that you dealt with

11 regularly?

12 A. My contact, yes.

10:55:00 **13** Q. Do you recall approximately when it is that you received

10:55:04 **14** this laptop computer?

10:55:06 **15** A. The fall or late 2004, early 2005.

16 Q. Can you give us a basic description of what that laptop

10:55:21 **17** computer looked like?

18 A. Silver. It was -- the manufacturer was Dell, and I

19 believe it was an Inspiron.

10:55:33 **20** Q. Can you give the members of the jury a basic

21 understanding of what your knowledge was of computers when you

22 started this case?

23 A. I can do a little more than turn it on, send some

10:55:44 **24** e-mails, and do a Word document.

10:55:49 **25** Q. Have you received any kind of significant computer

1 training in the military?

2 **A.** In -- there was basic stuff but it was nothing like they
3 have today. We had to -- the computers I came across in the
4 military were -- you had to load them by UBC-74.

10:56:14 **5** **Q.** Nothing like the Dell computer you got in connection
6 with the case in 2004?

10:56:19 **7** **A.** No. I could carry this one.

10:56:23 **8** **Q.** Did your understanding and abilities in the areas of
10:56:27 **9** computers change during the course of your involvement in this
10 case?

10:56:30 **11** **A.** Yes.

12 **Q.** Can you tell the members of the jury basically how it
13 changed?

14 **A.** Dealing with Mohammad Amawi and basically learning from
15 him, I learned a lot of the things from him and watching him.

16 **Q.** Can you --

17 MR. SOFER: Can you put in 3-A, please?

10:57:05 **18** BY MR. SOFER:

19 **Q.** Do you recognize what is depicted in Government's
10:57:08 **20** Exhibit 3-A for identification?

21 **A.** Yes. It looks like the Dell computer I used.

22 MR. SOFER: At this time, Your Honor, we'll offer
23 it as Government's Exhibit 3-A.

24 THE COURT: It will be admitted.

10:57:21 **25** MR. SOFER: How about 3-B.

10:57:28 **1** BY MR. SOFER:

10:57:29 **2** **Q.** Does that look familiar to you?

3 **A.** It looks like the bottom of the Dell computer.

10:57:34 **4** MR. SOFER: At this time the government will offer
5 3-B.

10:57:38 **6** THE COURT: It will be admitted.

10:57:43 **7** BY MR. SOFER:

10:57:43 **8** **Q.** Can you give the jury a basic description of how is it

10:57:48 **9** you used this laptop computer that was given to you by the FBI?

10 **A.** I used it to help enhance my information gathering.

10:57:57 **11** **Q.** And what do you mean by that?

12 **A.** And to bring it sort of -- well, accompany with it, me,

13 when I meet with people of interest and view websites.

10:58:18 **14** **Q.** Did you put any of your personal information on the
15 computer?

16 **A.** I went to some site, yes.

10:58:24 **17** **Q.** Did the FBI give you instructions about not putting

10:58:29 **18** personal information on the computer?

19 **A.** No. They told me to use it how I normally would.

10:58:35 **20** **Q.** Were there times when you gave this computer back to the
21 FBI?

22 **A.** Yes.

10:58:39 **23** **Q.** And were there times when you gave the computer to
24 Mohammad Amawi?

10:58:44 **25** **A.** Only when I was physically with him.

10:58:49 **1** Q. Can you give an example to the jury of why it was you
10:58:53 **2** would have given custody or control of the computer to Mohammad
3 Amawi during the course of the case?
4 A. At least on one occasion while we were at his residence,
5 we -- he attempted to network the computer from his desktop to
10:59:11 **6** the laptop.
10:59:12 **7** Q. And what was the purpose of doing that?
8 A. To pass videos and information.
10:59:20 **9** Q. Can you tell the members of the jury -- I think you said
10:59:23 **10** you met with two agents primarily that you've dealt with
11 throughout the course of the case?
12 A. Yes.
10:59:28 **13** Q. What are their names?
10:59:29 **14** A. Bill Radcliffe and Shannon Coats.
15 Q. Which one did you deal with first?
10:59:34 **16** A. Bill Radcliffe.
17 Q. Do you know if Agent Radcliffe is still working for the
18 FBI?
19 A. He is not.
20 Q. Do you know why?
10:59:40 **21** A. He retired.
10:59:41 **22** Q. And did Shannon Coats replace Radcliffe when Agent
10:59:48 **23** Radcliffe retired?
24 A. Yes.
10:59:49 **25** Q. You testified the FBI pays you during the course of your

1 work for them?

10:59:53 **2** **A.** Yes.

3 **Q.** Tell the members of the jury what your understanding of
4 what this money was for.

5 **A.** To help me keep up the identity of what I had to do and
6 not -- so I wouldn't have to go get a job, just a regular job

11:00:11 **7** and try to keep up this identity. It was also to pay the bills

11:00:17 **8** and support my family.

11:00:24 **9** **Q.** You still being paid by the FBI today?

11:00:26 **10** **A.** Yes.

11 **Q.** Can you tell the members of the jury what your

11:00:29 **12** understanding is as to why you're still being paid today?

13 **A.** Basically to help and go through all of the videos and

11:00:37 **14** all the materials created in this case.

11:00:44 **15** **Q.** What kind of time have you spent in terms of assisting

16 in the preparation of this case?

11:00:53 **17** **A.** A huge amount of time.

11:00:55 **18** **Q.** When you say "huge", what do you mean by that, hours per

11:01:04 **19** day?

20 **A.** Hours per day?

21 **Q.** Can you give us a basic --

22 **A.** I would say at least 12 hours a day for the last -- at

11:01:15 **23** least the last month, for example. That's just recent.

11:01:24 **24** **Q.** Were you asked to review the recordings you made?

11:01:27 **25** **A.** Every single one.

11:01:31 **1** Q. Were you able to work full-time during the work with the
11:01:36 **2** FBI or the duration of this case?

11:01:38 **3** A. No.

4 Q. Is any of the money that you're receiving related to
5 what happens in this case?

11:01:47 **6** A. Can you rephrase the question?

7 Q. Has anyone ever told you that if you get --

11:01:52 **8** THE COURT: You're starting to lead the witness.

11:01:56 **9** MR. SOFER: Sorry, Your Honor.

10 BY MR. SOFER:

11 Q. Again, your understanding of why it is you were paid
12 this money, can you just describe that for the jury?

13 A. Just to prepare the case so I didn't have to go get a
14 job and it was actually kind of impossible to do that since my
11:02:12 **15** name was released two years ago.

11:02:17 **16** Q. Do you recall all the details of all of your
17 interactions with the individuals related to this case as you
11:02:23 **18** sit here today?

19 A. No.

20 Q. Can you tell the members of the jury why that is?

11:02:27 **21** A. I spent hundreds of hours with these men and over 20

11:02:38 **22** subjects I was gathering information on. It would be

23 impossible. It would be impossible to keep every detail,

24 recall every detail.

25 Q. When you say "20 subjects", what do you mean by that?

1 A. 20 people of interest.

2 Q. So 20 people in addition to these three men?

3 A. Yes.

11:03:00 **4** Q. Is that an approximate number?

5 A. Approximate, yes.

11:03:10 **6** Q. You testified that you did not, for the most part, take

11:03:14 **7** notes. How did you relate information to the people, your

11:03:19 **8** contacts at the FBI?

11:03:20 **9** A. One, with the recording devices provided; and two, after

11:03:29 **10** or almost always after every event, I would meet with my contact

11:03:36 **11** and regurgitate and give to him what I could remember about that

12 contact.

11:03:44 **13** Q. Were you always able to relate all of the information

14 right away?

11:03:48 **15** A. No.

16 Q. Can you tell the members of the jury why that was?

17 A. These things would go until the early hours of the

18 morning, 12:00, 1:00, 2:00 in the morning, and I would have to

19 wait until the morning to wait until my contact came to work.

11:04:09 **20** Q. Can you tell us what you have relied upon primarily in

11:04:13 **21** refreshing your recollection of the events relating to this case

11:04:17 **22** for your testimony before the jury?

23 A. The recordings.

11:04:22 **24** MR. SOFER: Your Honor, at this time I'd like to

25 hand up to Mr. Griffin what's been marked as Government's

1 Exhibit 4-A for identification, the document we've talked about.

2 THE COURT: I understand.

11:04:36 **3** Objections?

11:04:37 **4** MR. BOSS: Not at this time.

11:04:44 **5** THE COURT: It's my understanding this will not be
6 displayed to the jury; is that correct?

11:04:48 **7** MR. SOFER: Not displayed to the jury and not
11:04:51 **8** introduced into evidence by the government.

11:04:55 **9** MR. BOSS: Judge, we would have no objection to the
10 witness having this document. However, we, of course, would
11 like the Court to caution him it should not be read in advance
12 of his need.

13 THE COURT: Mr. Griffin, you'll have with you, at
11:05:11 **14** least initially, the document marked for identification as 4-A.

15 I instruct you to refrain from looking at or reviewing that
11:05:19 **16** document unless expressly asked to do so by Mr. Sofer or someone
11:05:23 **17** else.

11:05:24 **18** THE JUROR: Yes, sir.

11:05:25 **19** MR. BOSS: Judge, would that same caution extend to
20 during breaks?

11:05:29 **21** THE COURT: Of course.

11:05:31 **22** MR. SOFER: May I approach the witness?

11:05:33 **23** THE COURT: Of course.

11:05:35 **24** MR. SOFER: I'll turn it over.

11:05:42 **25** BY MR. SOFER:

11:05:46 **1** Q. You stated that you used recording devices as part of
2 your work for the FBI. Can you describe for the jury what
3 these devices recorded?

11:05:55 **4** A. The actual events as they happened.

5 Q. And do they record audio, video, or both, or don't you
6 know?

7 A. Audio and video and both.

11:06:07 **8** Q. Did you ever wear or hide multiple devices on your
9 person?

10 A. Yes.

11 Q. And can you tell the members of the jury who decided
11:06:16 **12** what devices you would wear?

11:06:18 **13** A. The FBI for the most part.

11:06:27 **14** Q. Can you give the jury a basic description of how you

11:06:30 **15** used the recording devices that were given to you by the FBI;

16 When would you put them on, when would you take it off, how

17 would you turn them on, without giving us any details as to the

18 particular way they worked?

19 A. I tried to turn it on before I actually came in the

20 presence of every person of interest because it wasn't -- it

21 wasn't easy to turn on. And -- but you can do it covertly, but

22 it's not -- it's obvious, you know. The best I could, I turned

11:07:11 **23** it on and off, but usually before I met and then after I left

24 the subject.

11:07:18 **25** Q. Did you always record all of the conversations you had

11:07:22 **1** with people who were of interest to you and the FBI?

2 A. No.

11:07:26 **3** Q. Did the devices that you used have limitations to them?

4 A. Yes.

5 Q. Can you give us a basic description without going into

11:07:34 **6** specific details of the kinds of limitations we're talking

7 about?

11:07:38 **8** A. They had time restraints.

11:07:42 **9** Q. Can you give the jury some examples of any situations

10 where you were unable to record conversations?

11:07:50 **11** A. During prayer times.

11:07:55 **12** Q. Why was it you were unable to record during prayer

11:08:01 **13** times?

11:08:02 **14** MR. HARTMAN: Objection. May we approach?

15 (Whereupon the following discussion was had at the

11:14:37 **16** bench outside the hearing of the jury:)

11:14:37 **17** MR. HARTMAN: Judge, if you recall we filed a

18 motion about these recording devices, we were not allowed to

19 examine them. Because we weren't allowed to examine them, I

20 don't think it's fair for him to go into them because we have no

21 way to test the veracity.

22 THE COURT: I agree.

23 MR. SOFER: I think that's silly. The reason I

24 say that, Your Honor, is I'm not asking him about the particular

25 specifics. In fact, I'm specifically staying away from that.

1 THE COURT: He's testifying he turned them on and
2 off.

3 MR. SOFER: How else are we supposed to explain
4 that to the jury?

5 MR. HARTMAN: Turning them on and off was a serious
6 issue in our defense. That's why we wanted our expert to
7 examine them and find out what they could and couldn't do.
8 They said no, they wouldn't let us do it. How can we rely upon
9 him to say that when the expert couldn't even look at it? We
10 have no way of knowing if he's telling the truth or not.

11 MR. SOFER: Under that theory, Your Honor, we can't
12 have him explain turning the thing on and off. It doesn't make
13 any sense.

14 MR. SOFER: I would --

15 THE COURT: I would agree. The issue is not the
16 device itself. The fact that he's testified he operated it by
17 turning switches, have him testify he turned the switch on and
18 off and he determined he turned it on, it recorded things, when
19 he turned it off, it wouldn't.

20 MR. SOFER: I am going to ask him if he could tell
21 when he turned it on and off if it was on or off.

22 MR. HARTMAN: My understanding is he was going to
23 go into what kind of time frame could you record with this
24 device when it was turned on.

25 MR. SOFER: I'm specifically not asking him the

1 specific question about the capabilities of these devices. For
2 the same reason that we would not allow defense counsel access
3 to them.

4 THE COURT: I'm not so sure.

5 MR. SOFER: The government's not asking that
6 information.

7 MR. IVEY: He did testify that the devices had time
8 restraints. And I'm assuming --

9 THE COURT: He just said that.

10 MR. SOFER: I understood. That's all I asked him,
11 whether they had time restrictions, not whether he had any
12 limitations. I didn't ask him how much. I'm not going to.

13 THE COURT: Is there going to be any testimony that
14 portions of conversations were not testified to because it
15 otherwise was not functioning because of any time constraint?

16 MR. SOFER: He is going to testify, as I understand
17 it, Judge, that the device, because he knew it had time limits,
18 he had to conserve time here and there and he had to turn it off
19 sparingly sometimes.

20 THE COURT: I do think that for the jury to
21 evaluate that evidence, they at least ought to know generally
22 what the life of the device was. Is it battery-related?

23 MR. SOFER: I can do that very generally. I think
24 for obvious reasons, I'll put them on the record, the government
25 and the FBI are not interested in letting whether they -- I'm

1 not talking about terrorists -- any kind of criminal now; it's
2 no different than telling someone the range of a missile. Is
3 the comparable type thing to have someone know if I sit with
4 this guy for three hours he can't go any farther.

5 THE COURT: I think it's appropriate to say what
6 was his understanding as to the period for which this device
7 could operate. It's his understanding. It really does affect
8 the issue of when and why he recorded things.

9 MR. SOFER: Would Your Honor allow a question
10 like -- a fairly leading question in which I ask: Did the
11 device have less than 12 hours, 10 hours?

12 THE COURT: Yeah.

13 MR. SOFER: But I'm specifically going to say, tell
14 us, but don't tell us how much less.

15 THE COURT: Does this device have a recording --

16 MR. SOFER: I'm going to tell the Court right now I
17 am going to over-estimate that because I cannot and I will not
18 be able to divulge the specific amount of time these devices are
19 capable of recording.

20 THE COURT: Overestimate by how much?

21 MR. SOFER: Then I'm revealing that information.

22 MR. DOUGHTEN: Weren't those devices four years
23 ago? Certainly the devices you were using four, five, six
24 years ago aren't the same devices being used now. So if the
25 interest is protecting that...

1 MR. SOFER: A I would not guarantee that by any
2 stretch of the imagination. If you know anything about the
3 government, they were probably years and years old then. Two,
4 if we want to go down this road with more specificity I need an
5 opportunity to speak with the people whose equity --

6 THE COURT: We'll return to this. You don't need
7 that right now.

8 MR. SOFER: And I won't -- all I've asked him so
9 far is could you turn it on and off and why were you turning it
10 on and off.

11 THE COURT: We will revisit that. I think Mr.
12 Doughten raises a very good point. If it's been replaced or
13 whatever, it's being phased out, that's fine. I think it is
14 fair, though, I think it's very important that the jury have
15 some sense of the period for which one of these things will run.
16 Most of us have enough experience with tape recorders to know
17 sooner or later the battery runs out.

18 MR. SOFER: That's all I've asked him so far, does
19 it have limitations.

20 MR. HARTMAN: There's going to be cross-examination
21 about when and why this was turned on and off, and therefore --

22 THE COURT: I understand.

23 MR. HARTMAN: Okay.

24 THE COURT: We'll sort it out. I want him to have
25 a chance to talk to people. I'll permit him to instruct the

1 witness only to answer that question when the time comes.

2 (End of side bar)

11:14:38 **3** THE COURT: Okay. Mr. Sofer, ladies and gentlemen,
4 thank you for your patience, and the answer may stand and you may
5 proceed.

11:14:46 **6** BY MR. SOFER:

11:14:51 **7** Q. I think I asked you were there times you were unable to
11:14:55 **8** record conversations.

11:14:56 **9** A. Yes. When -- possibly when I simply couldn't turn the
10 device on, if I was with one person of interest, and another one
11:15:10 **11** called, it's not convenient. It's cumbersome to turn it on at
12 times without jeopardizing my security and the operation.
11:15:24 **13** There was -- at times I just couldn't. And to conserve time on
11:15:33 **14** the device when we were just doing just normal banter I would
11:15:43 **15** turn it off.

16 Q. Were there times when you didn't have a device at all?

17 A. Yes.

18 Q. Can you give the jury an example of why that might
11:15:51 **19** happen?

20 A. I was with my family and a person of interest called.

11:15:57 **21** Q. You said you could be with one person of interest and
22 another person of interest could call or come over. During the
23 course of your work on this case, approximately how many other
24 people were you gathering information about?

11:16:12 **25** A. Approximately -- over 20.

11:16:16 **1** Q. And were there days in which you worked on gathering

11:16:20 **2** information from multiple people related to this case?

11:16:24 **3** A. Yes, most of the time.

4 Q. Were there days when you worked on this case and cases
5 that are not related to this case?

11:16:32 **6** A. Yes, most of the time.

7 Q. Did you have to travel or fill other obligations with
8 respect to the cases that do not relate to this case?

9 A. Yes.

11:16:45 **10** Q. I think you said you did not record prayers before when
11 we went up the to the bench?

12 A. Yes.

13 Q. Can you tell the members of the jury why that was?

14 A. I tried to respect the faith.

11:17:02 **15** Q. And did -- were you always able to do that?

16 A. No.

17 Q. Can you tell us why not?

18 A. I was -- if -- you can't tell if the device is on and

19 off sometimes. Once again, it's cumbersome. And if I started

20 with a person of interest and they went into prayer, and I

11:17:27 **21** wasn't able to turn the device off, and I could just guesstimate

22 and do that.

23 Q. Were you capable of listening to the recordings after

24 each one was made?

25 A. No.

- 11:17:39 **1** Q. Why is that?
- 2** A. I didn't have the software to do it.
- 11:17:45 **3** Q. Without going into detail -- strike that.
- 4** Were you able to tell if and when the device was
- 11:17:54 **5** running out of memory?
- 6** A. No.
- 11:17:57 **7** Q. After you were done with a device, what did you do with
- 11:18:04 **8** it?
- 9** A. I reported to my contact and let him know that I had
- 10** information.
- 11:18:09 **11** Q. And what did you then do?
- 12** A. I would turn it over to the FBI.
- 13** Q. And what would happen to it after that, do you know?
- 11:18:19 **14** A. No. It's my understanding it was cleaned.
- 15** Q. You say "cleaned". What is your understanding of what
- 16** that means?
- 17** A. That I would be given a new device with no information
- 18** on it.
- 19** Q. Were there times during the case where you accidentally
- 20** recorded things you didn't want to record?
- 21** A. Yes.
- 11:18:39 **22** Q. Can you tell the members of the jury how that happened?
- 11:18:43 **23** A. I -- whether it be the operator or equipment
- 24** malfunction, it just didn't go off.
- 25** Q. You were the operator, right?

11:18:56 **1** A. Yes.

11:18:57 **2** Q. Can you give us examples of things that you recorded
3 that you didn't want to record?

11:19:03 **4** A. Bathroom incidents and family.

11:19:10 **5** Q. That is whose family?

6 A. My family.

11:19:14 **7** Q. Were there times when you recorded any of your
11:19:17 **8** interactions with the FBI?

11:19:18 **9** A. Yes.

11:19:19 **10** Q. Approximately how many of those, if you know?

11:19:24 **11** A. A couple.

11:19:26 **12** Q. And was it your -- did you do that on purpose or was
13 that an accident?

14 A. It was an accident.

11:19:34 **15** Q. If you know, did you have the ability to record over
11:19:37 **16** portions that were previously recorded?

11:19:40 **17** A. No.

11:19:41 **18** MR. HARTMAN: Objection.

11:19:42 **19** THE COURT: Basis.

20 MR. HARTMAN: Same objection.

21 THE COURT: No, that's -- overruled. You may
22 answer to the extent of his knowledge and familiarity.

23 A. No.

11:19:56 **24** BY MR. SOFER:

11:19:56 **25** Q. Could you open the device and see, like, a tape or CD

11:20:00 **1** inside?

2 A. No.

11:20:01 **3** Q. Were you able to move the recording back and forth like,

11:20:06 **4** say, a tape recorder?

5 A. No.

11:20:08 **6** Q. Did you eventually listen to the recordings that you

7 made in connection with this case?

8 A. Yes.

11:20:14 **9** Q. Can you tell us approximately when it was that you

11:20:18 **10** reviewed a large portion of these for the first time?

11 A. May of 2006.

11:20:23 **12** Q. And was that after the investigative portion of the case

11:20:27 **13** was over?

14 A. Yes.

11:20:28 **15** Q. Have you listened to some of these recordings on

11:20:34 **16** multiple occasions?

11:20:36 **17** A. Yes.

18 Q. You don't seem very happy about that. How many times

19 have you been asked to listen to some of these recordings on

11:20:43 **20** multiple occasions?

21 A. Over ten times. Almost a ridiculous amount.

22 Q. Have you listened to several of these recordings over

11:20:53 **23** the past several weeks?

24 A. Yes, all of them.

25 THE COURT: The answer was?

11:20:57 **1** THE WITNESS: All of them.

11:21:00 **2** BY MR. SOFER:

11:21:00 **3** Q. By "all of them", do you mean all of the recordings you
4 made throughout your work for the FBI?

11:21:06 **5** A. No, just the ones that were used in this case.

11:21:10 **6** Q. And are those the ones that -- to your knowledge that
7 you're going to be testifying about here during the government's
8 case?

9 A. Yes.

11:21:20 **10** MR. SOFER: Your Honor, at this time I'd like to
11 show the witness what's been marked Number 4 for identification.
12 Government's Exhibit 4 for identification.

11:21:47 **13** MR. SOFER: My little hands can't carry all of
14 these.

11:21:59 **15** Take a few seconds, please, and take a look at
11:22:03 **16** what's been marked as Government 4. I believe for the record,
11:22:08 **17** Your Honor, there are 74 compact discs and nine cassette tapes
18 there.

11:22:38 **19** BY MR. SOFER:

20 Q. As you look through those, do you know what they are?

21 A. They're CDs.

22 Q. Are these the recordings you made or copies of them?

23 A. To my knowledge.

11:22:48 **24** Q. You have listened to these?

25 A. Yes.

1 Q. How do you know that?

2 A. Because of my signature and date.

11:23:00 **3** MR. SOFER: I think if Defense Counsel will
4 stipulate that they each contain some marking on them.

5 THE COURT: Pardon?

6 MR. SOFER: We either have them go through them
7 all -- let's just go through them all.

8 THE COURT: I don't think -- unless that's
9 necessary.

11:23:15 **10** MR. HARTMAN: I don't believe it is.

11 THE COURT: Let's move on. We'll assume. If for
11:23:21 **12** any reason he appears to conclude that's not so, call it to the
11:23:27 **13** jury's attention.

11:23:28 **14** MR. SOFER: Counsel's had an opportunity to review
11:23:31 **15** these.

16 THE COURT: No problem.
11:23:36 **17** BY MR. SOFER:

11:23:37 **18** Q. Did you record your interactions with the individuals
11:23:39 **19** involved in this case?

11:23:40 **20** A. Yes.

21 Q. Again, did you record all of your interactions with
22 them?

11:23:44 **23** A. No.

24 Q. Why not?

11:23:45 **25** A. Because we'd talk about day-to-day stuff at times. And

11:23:53 **1** due to time limitations, I, and me spending hours with the --
2 with the men, I would have to conserve space.

11:24:09 **3** **Q.** Did you end up recording nevertheless just day-to-day
4 conversation with them?

5 **A.** Yes.

6 **Q.** Can you tell the jury why that is?

11:24:18 **7** **A.** Basically I wouldn't know when they're going to say,

11:24:26 **8** hey, check this -- when they would say things -- say things of
9 interest or when they would be -- announce threats to people of
10 the U.S. or our allies overseas.

11:24:44 **11** **Q.** Can you give the jury an idea to your knowledge of what

11:24:48 **12** fraction of the total amount of recordings is contained in the

13 portions that you have most recently reviewed in Government's

14 Exhibit Number 4?

11:24:57 **15** **A.** This is maybe -- maybe ten percent.

11:25:04 **16** MR. SOFER: If I haven't already, Your Honor, I'd

17 like to move Government's Exhibit 4 into evidence.

11:25:09 **18** MR. HARTMAN: No objection.

11:25:10 **19** THE COURT: It will be admitted.

11:25:15 **20** BY MR. SOFER:

11:25:16 **21** **Q.** I'd like you to try to give us a very general

11:25:21 **22** description of what happened in the course of this case with

23 these individuals. Can you try to do that for us?

11:25:33 **24** **A.** It approximately started shortly after 9/11. I -- they

25 were not the people of interest, but they ran in circles of

1 people of interest. They really didn't raise any threats that
2 I could identify or report to the FBI. In 2002, El-Hindi had
11:26:12 3 said a few things during the early September time frame.

11:26:18 4 Q. Do you see Marwan El-Hindi in the courtroom today?

5 A. Yes, I do.

6 Q. Can you point him out and identify an article of
7 clothing he's wearing?

8 MR. BOSS: Judge, we'd stipulate to the
9 identification of Mr. El-Hindi.

11:26:32 10 THE COURT: Okay.

11:26:37 11 BY MR. SOFER:

12 Q. I want to show you Government's Exhibit 5 for
13 identification. Do you recognize who's depicted in

11:26:50 14 Government's Exhibit Number 5 for identification?

15 A. That is Mr. El-Hindi.

16 Q. Does it fairly and accurately represent the way he
11:26:55 17 looked, approximately, when you first met him?

18 A. Yes.

19 MR. SOFER: At this time the government moves
11:27:02 20 Exhibit Number 5 into evidence.

21 MR. HARTMAN: No objection.

22 THE COURT: Admitted.

23 BY MR. SOFER:

24 Q. You said he said something -- I don't know what the word
11:27:09 25 is you used, disturbing or something, to you in early September

1 of 2002?

2 **A.** Yes. He had asked basically two questions: One, how

11:27:20 **3** easy would it be to kidnap an Israeli soldier; and two, how

4 would -- how easy would it be to kidnap a politician?

11:27:33 **5** **Q.** Now, at that time had you already spent time with

6 Mr. El-Hindi?

11:27:40 **7** **A.** Yes.

11:27:42 **8** **Q.** And had you put your cover story out yet?

9 **A.** Yes.

10 **Q.** And again, can you describe what it is that your cover

11 story was during this period of time?

11:27:55 **12** **A.** A disenchanted ex-U.S. Army veteran, disenchanted with

13 the government and sympathizing and being an Islamic extremist.

11:28:08 **14** THE COURT: I didn't hear the last part.

11:28:11 **15** THE WITNESS: Islamic extremists.

11:28:19 **16** THE COURT: Before that. Oh, sympathized.

17 BY MR. SOFER:

18 **Q.** Did there come a time after he mentioned kidnapping an

11:28:28 **19** Israeli soldier and U.S. politician, did he say something else

20 which gave you concern?

21 **A.** Yes, approximately on 9/11, 2002, he made the statement

22 that if I knew any information that could help the brothers

23 overseas, I should share it.

11:28:46 **24** **Q.** And do you know what he was referring to when he said

25 that?

11:28:49 **1** A. Yes. We were about to start a combat operation in Iraq,
11:28:56 **2** and if -- basically he was asking me if I knew when that was
3 going to happen or how.

11:29:05 **4** Q. Now, did you -- why were you spending time with Marwan
11:29:09 **5** El-Hindi during this period of time?

6 A. Because he was with a person of interest. He was in
7 that circle.

11:29:17 **8** Q. Did you continue to spend time with him throughout 2002
9 and 2003?

10 A. Yes.

11:29:23 **11** Q. And can you tell the members of the jury basically,
11:29:25 **12** without going into too many of the details, what kinds of things
13 he was doing and what kind of things you were doing together
14 with him?

11:29:33 **15** A. He had involved me in a few things. There was
11:29:43 **16** money-making ideas. There were trash bags or -- not trash
17 bags, plastic bags, a thing that he tried to make money on.
11:29:54 **18** Candy, and -- for 2002, 9/11, he had American flags.

19 Q. And did you participate in these business activities
11:30:07 **20** with him?

21 A. Yes.

11:30:08 **22** Q. Were there times when you actually gave him money with
23 respect to some of these business ventures?

24 A. Yes, I would pay for certain things like storage, a
11:30:24 **25** storage facility for these items.

1 Q. And was this after he had made some of the comments that
2 you just described?

3 A. Yes.

4 Q. Can you tell the members of the jury why -- well, first
5 of all, where did you get the money that you gave to him from?

6 A. From the FBI.

7 Q. And can you tell us why it is that you gave him money?

8 A. For one, he was around people of interest, and he had

11:30:48 **9** started making comments, so I was gathering information to

11:30:54 **10** become part of that circle, trying to get in that circle.

11:30:58 **11** Q. Did there come a time during this basic period of time,

12 2002, 2003, into 2004 when you met Mohammad Amawi?

13 A. Yes. I'm not sure at the beginning exactly what time.

14 And what I mean by that is it could be shortly after 9/11 or

11:31:24 **15** when I began information-gathering, but basically when I noticed

11:31:34 **16** him and a visual change was basically spring of 2004, he had

17 visibly made -- he returned from a trip from Jordan and he had

11:31:49 **18** physically changed his appearance and his -- he was more

11:31:56 **19** outspoken, more radical.

11:32:01 **20** Q. I'd like to show you what's been marked Government's

11:32:07 **21** Exhibit 7-E. Do you recognize who's depicted in Government's

22 Exhibit 7-E?

11:32:21 **23** A. Mohammad Amawi.

11:32:22 **24** Q. Does that picture fairly and accurately represent the

11:32:25 **25** way he looked basically when he returned from Jordan?

1 A. Yes.

11:32:31 **2** MR. SOFER: 7-F, please.

11:32:31 **3** BY MR. SOFER:

4 Q. Does that picture also fairly and accurately represent

11:32:37 **5** the way Mohammad Amawi looked approximately when he returned
6 from Jordan in 2004?

7 A. Yes.

11:32:44 **8** MR. SOFER: 7-G, please.

11:32:46 **9** BY MR. SOFER:

11:32:46 **10** Q. Does that picture also fairly and accurately represent

11:32:50 **11** the way Mohammad Amawi looked approximately when he returned
11:32:53 **12** from Jordan in 2004?

11:32:54 **13** A. Yes.

11:32:57 **14** MR. SOFER: Move those exhibits, 7-E through G,
15 into evidence, Your Honor.

16 MR. IVEY: No objection.

17 THE COURT: They we'll be admitted.

11:33:05 **18** MR. SOFER: Put up 7-A, please.

11:33:05 **19** BY MR. SOFER:

11:33:08 **20** Q. Do you recognize the person depicted in 7-A?

11:33:12 **21** A. Yes.

11:33:13 **22** Q. Who is that?

23 A. Mohammad Amawi.

11:33:17 **24** Q. Does that represent the way that Mohammad Amawi looked
11:33:21 **25** approximately prior to leaving for Jordan in 2004, to the best

1 of your recollection?

2 **A.** Yes.

11:33:29

3 MR. SOFER: At this time, Your Honor, the

4 government moves 7-A into evidence.

11:33:34

5 THE COURT: It will be admitted.

11:33:36

6 MR. SOFER: 7-B, please.

11:33:42

7 BY MR. SOFER:

8 **Q.** Again, Government's Exhibit 7-B, do you recognize who's
9 depicted there?

10 **A.** Mohammad Amawi.

11 **Q.** And does that fairly and accurately represent the way he
12 looked approximately before he went to Jordan?

11:33:54

13 **A.** Yes.

11:33:56

14 **Q.** How about 7-C. Do you recognize who's depicted there?

15 **A.** Yes.

16 **Q.** Who is it?

17 **A.** Mohammad Amawi.

18 **Q.** Does that fairly and accurately represent the way he
19 looked before he went to Jordan, approximately?

20 **A.** Yes.

21 MR. SOFER: 7-D, please.

11:34:22

22 THE COURT: 7 what?

23 MR. SOFER: "D" as in David, Your Honor.

11:34:25

24 BY MR. SOFER:

25 **Q.** Do you recognize who's depicted there?

1 A. Yes.

11:34:29 **2** Q. Who's that?

11:34:32 **3** A. I believe it to be Mohammad Amawi.

4 Q. Does that fairly and accurately represent the way he
11:34:37 **5** looked approximately when he returned from Jordan?

11:34:40 **6** A. Yes.

7 MR. SOFER: The government moves Exhibits 7-A, 7-B
8 and 7-C into evidence.

11:34:47 **9** MR. IVEY: No objection.

10 THE COURT: They'll be admitted.

11 BY MR. SOFER:

11:34:50 **12** Q. Do you see Mohammad Amawi in the courtroom today?

13 A. Yes, I do.

14 Q. Would you please point him out and point out an article
15 of clothing he's wearing?

16 A. Gray suit, tie.

11:35:04 **17** MR. SOFER: Indicating the defendant, Your Honor.

18 THE COURT: It does.

11:35:10 **19** BY MR. SOFER:

20 Q. After you noticed Mohammad Amawi in the spring of 2004,

11:35:18 **21** did there come a time when in the summer of 2004 you received a

22 telephone call from Marwan El-Hindi?

11:35:27 **23** A. Yes, in approximately -- around June 23.

11:35:32 **24** Q. And can you tell the members of the jury basically what

25 that telephone call was about?

11:35:38 **1** **A.** It was a call out of the blue. He basically had said
2 he had two recruits that he wanted me to meet and train.
3 **Q.** Shortly thereafter did there come a time when you heard
4 Mohammad Amawi say something that caught your attention?
5 **A.** Yes. A few days later at the Mosque on Monroe Street
6 here in Toledo, Ohio, he was telling various members at the
7 At-Tawfeeq Mosque about his recent trip to Jordan.
11:36:17 **8** THE COURT: He was telling various, who? I
9 couldn't heard the word.
11:36:23 **10** THE WITNESS: Various people, explaining his trip
11:36:28 **11** to Jordan, and that on that trip how he tried to get into Iraq
12 and perform Jihad.
11:36:39 **13** BY MR. SOFER:
11:36:39 **14** **Q.** Can you tell us, was there any follow up to the
11:36:43 **15** telephone call -- strike that.
11:36:46 **16** To your knowledge during that period of time did
17 Marwan El-Hindi and Mohammad Amawi know each other?
11:36:52 **18** **A.** Not to my knowledge.
11:36:53 **19** **Q.** And were you at that juncture now collecting information
11:36:59 **20** with respect to both of them after these comments were made?
21 **A.** Yes.
22 **Q.** Did there come a time when the two people that Marwan
11:37:10 **23** El-Hindi mentioned that he wanted you to train, that you
11:37:13 **24** actually met them?
25 **A.** Yes, a few days later on July 3 and 4 of 2004.

11:37:22 **1** Q. Where was that?

2 A. At the ICNA conference in Cleveland, Ohio.

11:37:27 **3** THE COURT: Can you spell that, please?

11:37:32 **4** THE WITNESS: India Charlie Never Alpha. Stands
5 for Islamic Circle of North America.

11:37:40 **6** BY MR. SOFER:

11:37:40 **7** Q. Did you meet two people at that conference?

11:37:45 **8** A. Yes, I met Khaleel Ahmed and Zubair Ahmed.

11:37:51 **9** THE COURT: If I can interrupt. You have referred
10 to a Mosque?

11:37:56 **11** THE JUROR: Yes.

12 THE COURT: Can you spell that, and please don't
11:37:58 **13** use the military; it's just easier for me if you use ordinary
14 letters.

11:38:06 **15** THE WITNESS: I'll give you phonetics.

11:38:15 **16** THE COURT: The name of the mosque. Can you say
17 what the name of the Mosque is?

11:38:23 **18** THE WITNESS: Tawfiq.

19 MR. SOFER: T-A-W-F-I-Q, but I'm not certain.

20 THE COURT: Somebody can tell me. That's fine.
11:38:31 **21** Where is this located?

11:38:33 **22** THE WITNESS: On Monroe Street near Auburn in
11:38:38 **23** Toledo, Ohio.

24 THE COURT: Do you happen to know the address?

11:38:41 **25** THE WITNESS: I do not.

11:38:45 **1** MR. SOFER: You said you met the two people that --

2 THE COURT: Let me ask you this: Do you

11:38:49 **3** anticipate, Mr. Sofer, when he refers to the Mosque, that's the

4 location he'll be referring to?

11:38:56 **5** MR. SOFER: I think he'll be referring to at least

6 two Mosques here in Toledo.

7 THE COURT: Mr. Griffin, when you refer to the

8 Mosque, if you'll please indicate which one.

11:39:09 **9** THE WITNESS: Yes, sir.

11:39:10 **10** MR. SOFER: It will be one much more than the

11:39:13 **11** other, Judge.

11:39:17 **12** BY MR. SOFER:

13 Q. You said you met these two individuals that Marwan

14 El-Hindi said he wanted you to train. Did you understand by

15 the way when he asked you to train them what he wanted you to

16 train them for?

11:39:30 **17** A. For which goes back to my cover story, as an Islamic

11:39:36 **18** extremist for Jihad.

19 Q. Had you talked about Jihad in the Mosque and with other

20 people?

21 A. Yes, during my cover.

11:39:42 **22** Q. Did some of the people you talked about Jihad, how did

23 these people react generally?

11:39:51 **24** A. Most of them, they gravitated away. I even got the

25 FBI -- they called the FBI on me. I got reported.

11:40:02 **1** Q. Did Marwan El-Hindi do that?

2 A. Not to my knowledge.

11:40:06 **3** Q. Did he shy away from you?

4 A. No.

11:40:11 **5** Q. When you -- when you met these individuals, you said you

11:40:16 **6** met them at the ICNA conference?

7 A. Yes.

8 Q. Do you know their names?

11:40:23 **9** A. Khaleel Ahmed and Zubair Ahmed.

11:40:27 **10** Q. I want to show you what's been marked Government's

11:40:31 **11** Exhibit Number 9. Do you recognize the person depicted in

11:40:38 **12** Government's Exhibit Number 9?

13 A. Zubair Ahmed.

11:40:40 **14** Q. Does it fairly and accurately represent the way he

15 looked approximately when you met him back in July of '04?

16 A. Yes.

17 MR. SOFER: At this time the government will move

11:40:51 **18** to admit Government's Exhibit Number 9 in evidence.

11:40:54 **19** THE COURT: Any objection?

11:40:56 **20** MR. HARTMAN: No.

11:40:59 **21** MR. IVEY: No, Your Honor.

22 BY MR. SOFER:

23 Q. Look at number -- Government's Exhibit 10 for

24 identification. Do you recognize who's depicted in

11:41:07 **25** Government's Exhibit Number 10?

1 A. Khaleel Ahmed.

11:41:10 **2** THE COURT: Mr. Sofer, can you spell those for the
3 jury.

4 MR. SOFER: Zubair is Z-U-B-A-I-R. Khaleel is
5 K-H-A-L-E-E-L. Last name Ahmed. A-H-M-E-D.

6 May I inquire, Your Honor?

11:41:28 **7** THE COURT: Go ahead.

11:41:29 **8** BY MR. SOFER:

11:41:30 **9** Q. Government's Exhibit Number 10, does that fairly and
10 accurately represent the way Khaleel Ahmed looked approximately
11 when you met him in July of 2004?

12 A. Yes.

13 MR. SOFER: And the government offers Government's
14 Exhibit 10 at this time, Your Honor.

15 THE COURT: It will be admitted. Any objection.

11:41:49 **16** MR. IVEY: No.

11:41:50 **17** BY MR. SOFER:

11:41:50 **18** Q. You had a conversation with those men at the ICNA
19 conference?

11:41:55 **20** A. Yes.

21 Q. We'll get to this later, but did you record that
22 conversation?

23 A. Yes.

24 Q. Can you tell us again very basically what else
11:42:03 **25** transpired through the year or two then that you worked on this

1 case involving Defendant Amawi and Defendant El-Hindi and
2 others?

3 **A.** Things began to slowly progress. I would interact and

11:42:24 **4** record all the activities with Mohammad Amawi and Marwan

11:42:30 **5** El-Hindi. I would view videos and materials at Mohammad

6 Amawi's house, also do the same thing at Marwan El-Hindi's

11:42:42 **7** house. We interacted at the Mosque, we ate together, and

11:42:52 **8** continued to build a rapport and relationship with them.

11:42:56 **9** **Q.** Can you tell us some of the things that happened during

10 the course of your interaction?

11:43:05 **11** **A.** We viewed videos and started gathering information.

12 Mohammad Amawi was giving me training materials. There was a

11:43:18 **13** bomb vest video that he introduced me to, Jihad, Islamic

11:43:29 **14** extremist websites that he directed me to, bomb making

15 materials.

11:43:33 **16** **Q.** What was the purpose of him giving these kinds of

11:43:37 **17** materials?

11:43:39 **18** MR. IVEY: Objection.

11:43:40 **19** THE COURT: Sustained.

11:43:40 **20** BY MR. SOFER:

21 **Q.** What did you understand the purpose --

22 MR. IVEY: Objection.

23 THE COURT: Sustained. I think he can testify as

24 to specific things that may have been said or whatever, but I

25 don't think he can testify as to what someone in fact intended.

1 BY MR. SOFER:

2 Q. What did you tell Mohammad Amawi about why it was that
3 you needed these materials?

11:44:04 **4** A. To begin training. He was interested in learning how
5 to fight.

6 Q. And what did you tell Mohammad Amawi and what did he
7 tell you about the purpose for this training?

8 A. He told me that he wanted to go perform Jihad against
11:44:22 **9** the U.S. troops overseas.

11:44:28 **10** Q. Did he tell you specifically, among other places, where
11:44:31 **11** he wanted to do that?

12 A. In Iraq.

11:44:38 **13** Q. Did there come a time when Mohammad Amawi gave you
11:44:42 **14** particular discs or videos?

11:44:45 **15** A. Yes, on numerous occasions. I believe the first time
11:44:52 **16** was in November of 2004.

11:44:58 **17** Q. Generally speaking, what would you do with the materials
18 that were given to you by Mohammad Amawi or Marwan El-Hindi or
11:45:06 **19** others?

20 A. I'd turn it over to the FBI.

21 Q. Did there come a time when you traveled somewhere with
11:45:12 **22** Marwan El-Hindi for purposes of getting a corporation?

23 A. Yes, we travelled to Michigan.

11:45:22 **24** Q. Do you know approximately when that was?

11:45:27 **25** A. I'd say early 2005.

11:45:31 **1** Q. Did there come a time when Mohammad Amawi talked to you
2 about obtaining a particular substance from overseas?

11:45:38 **3** A. Yes.

11:45:39 **4** Q. Can you tell the members of the jury, again very
11:45:41 **5** basically, about that?

11:45:43 **6** THE COURT: And when was this, time frame?

11:45:43 **7** BY MR. SOFER:

11:45:48 **8** Q. Approximately when was that?

9 A. Early 2005.

11:45:52 **10** Q. Okay. Again, can you describe that basically for the
11 jury?

11:45:56 **12** A. It was Astrolite; it was a chemical compound called
11:46:02 **13** Astrolite.

11:46:03 **14** THE COURT: Can you spell that, please, slowly.

15 A. A-S-T-R-O-L-I-T-E. I don't know if that's correct,
16 though.

17 BY MR. SOFER:

18 Q. Do you remember what he gave it to you on?

11:46:15 **19** A. He gave it to me on a Krispy Kreme napkin.

20 Q. Did there come a time when you actually trained some of
21 the individuals in this case or Mohammad Amawi, Marwan El-Hindi,
11:46:27 **22** or Wassim Mazloun in how to shoot?

23 A. Yes.

11:46:33 **24** Q. Who did you train?

11:46:35 **25** A. Marwan -- excuse me, Mohammad Amawi and Wassim Mazloun.

11:46:46 **1** MR. BOSS: Your Honor, could we have a
11:46:48 **2** clarification? I believe he first stated Marwan then did not
11:46:52 **3** clarify that is incorrect.
11:46:54 **4** THE WITNESS: Yes, that is incorrect.
11:46:56 **5** THE COURT: The jury will disregard that reference
6 to Mr. El-Hindi.
11:47:00 **7** BY MR. SOFER:
11:47:00 **8** Q. Did you misspeak?
9 A. Yes, I did.
11:47:07 **10** Q. So you trained Wassim Mazloun and Mohammad Amawi in
11:47:12 **11** shooting?
12 A. Yes.
13 Q. And where did that take place?
14 A. At the indoor shooting range in Cleland's out on Airport
15 Highway in Toledo, Ohio.
11:47:24 **16** Q. Again, can you give us a basic time reference as to when
17 that happened?
18 A. The first time was January of '05, and then --
19 Q. Who was present for that, among others?
20 A. Mohammad Amawi and others.
11:47:38 **21** Q. When was the next training session like that?
11:47:41 **22** A. April -- actual shooting was April the 20th of 2005.
11:47:48 **23** Q. Who was present for that, among others?
11:47:51 **24** A. Mohammad Amawi and Wassim Mazloun.
11:47:55 **25** Q. And how about April -- later on in April was there

1 another session?

11:48:00 **2** **A.** April 29.

11:48:01 **3** **Q.** And who was present for that particular session, among

11:48:05 **4** others?

5 **A.** Mohammad Amawi, Wassim Mazloun, and Bilal Mazloun.

6 **Q.** Who is Bilal Mazloun?

7 **A.** I believe to be the brother of Wassim Mazloun.

11:48:15 **8** **Q.** Do you see Wassim Mazloun here in the courtroom today?

11:48:18 **9** **A.** Yes, I do.

11:48:20 **10** MR. DOUGHTEN: We'll stipulate, Your Honor, to the

11 identification.

12 THE COURT: Okay. The record will so indicate.

11:48:29 **13** MR. SOFER: At this time I'd like you to take a

14 look at 21 for identification, please.

15 BY MR. SOFER:

16 **Q.** Do you recognize who's depicted in Government's Exhibit

11:48:38 **17** 21 for identification?

18 **A.** Wassim Mazloun.

11:48:40 **19** **Q.** And does that fairly and accurately represent the way he

20 looked basically when he was interacting with you during the

21 course of this case?

22 **A.** Yes.

11:48:48 **23** MR. SOFER: At this time the government moves

24 Exhibit 21 into evidence.

11:48:54 **25** MR. HELMICK: Without objection.

1 THE COURT: It will be admitted.

11:48:58 **2** BY MR. SOFER:

3 Q. Did there come a time that you travelled overseas with

11:49:01 **4** one or more of the defendants?

5 A. Yes, with Mohammad Amawi.

11:49:04 **6** Q. Again, basic time frame, can you give the members of the

11:49:07 **7** jury an idea of when that happened?

11:49:09 **8** A. The first time was in August, approximately the 22nd, to

11:49:16 **9** September 8 of 2005.

11:49:22 **10** Q. Among other things what was the purpose of that trip?

11 A. To link up with Islamic extremists in other countries.

12 Q. What was the purpose of doing that?

11:49:32 **13** A. To turn over resources that we had.

11:49:38 **14** Q. To your knowledge what was said about what those Islamic

11:49:42 **15** extremists were doing?

16 A. They were going to perform Jihad and going into Iraq.

11:49:52 **17** Q. Did there come another time when you went to Jordan with

11:49:56 **18** Mohammad Amawi?

19 A. Yes, December 13 through December 26 of 2005 also.

20 THE COURT: I missed the first date. When was

21 that?

11:50:09 **22** THE WITNESS: December 13.

23 THE COURT: Until when?

11:50:12 **24** THE WITNESS: December 26.

11:50:16 **25** BY MR. SOFER:

11:50:17 **1** Q. Did there come a time when your involvement in -- with
2 the interaction with the defendants stopped?

11:50:26 **3** A. Yes.

4 Q. Can you tell the members of the jury basically how and
5 when that happened?

6 A. Approximately February of 2006.

11:50:39 **7** MR. SOFER: Your Honor, this would be an opportune
8 time to stop. We don't have to...

11:50:44 **9** THE COURT: We'll take our midday break. We'll try
10 to resume not later than 1:00. If you could be available a

11:50:52 **11** little sooner than that, I'll try to do so myself. I do have
12 something during the noon hour, but I'll try to be back by
13 quarter of, no later than 1:00.

14 (Recess taken)

12:53:40 **15** (Jury not present in the courtroom.)

13:10:59 **16** MR. SOFER: These are relatively minor housekeeping
17 matters. If Counsel wants to wait until their clients are
18 here...

13:11:11 **19** THE COURT: Let's at least find out what they are.

20 MR. SOFER: Two things, Your Honor. One we have a
13:11:16 **21** cover sheet, I have distributed to counsel, that basically is a

13:11:20 **22** key or a legend for abbreviations that are used in the

13:11:25 **23** transcripts that are going to be rolling down the screen. I

13:11:28 **24** thought it might be helpful to give them out to the jury and the

25 Court and perhaps the court reporter and anyone else that wants

1 one, we have lots of copies, so if they see one of these codes
2 it they know what it means.

3 THE COURT: Just an index basically?

13:11:46 **4** MR. SOFER: I can hand it up to the Court.

13:11:48 **5** THE COURT: Any problem with the defendants?

6 MR. HARTMAN: No objection.

7 THE COURT: That's fine.

8 MR. SOFER: And I just ask that we place these in
9 the juror's notebooks or put them on their chairs.

10 THE COURT: It might make a little better sense to
11 take off the Bureau logo.

13:12:07 **12** MR. SOFER: We can do that later, unless you give
13 me some scissors.

13:12:14 **14** THE COURT: She'll run it off. By the time we're
15 ready to go she'll have it for you.

16 Anything else we ought to talk about?

13:12:31 **17** MR. SOFER: The transcripts themselves, which as

13:12:35 **18** Counsel and the Court know, are never actually introduced into
19 evidence except for those portions which are translations that

13:12:45 **20** are here in court. And I would -- I'm certainly not going to

21 do this through the witness, per se. I'd like -- they're

13:12:55 **22** marked for identification and I just wanted to put that on the

13:13:00 **23** record that they're here, marked for identification and that is

24 what will be in the computer age -- normally you would hand

25 these out to the jurors, they would be marked. Each transcript

13:13:12 **1** here we're running a computer script across the screen, if
13:13:19 **2** transcripts are here. Counsel has been made aware of any of
3 the changes we've made.

13:13:26 **4** MR. BOSS: I was just asking one of the government
13:13:29 **5** attorneys about these transcript changes. We've been given
13:13:34 **6** recently a few pages of what's basically an Excel spreadsheet of
7 all the changes. I'm wondering if we can get an electronic
13:13:44 **8** copy which we're discussing of the final changed transcripts
9 with these changes incorporated into them.

13:13:50 **10** MR. SOFER: That's not a problem. We don't have
11 them right here today.

13:13:54 **12** THE COURT: I understand.

13:13:55 **13** MR. SOFER: I'll e-mail them.

13:13:57 **14** THE COURT: Now, are we going to see these on here?

13:14:04 **15** MR. SOFER: Correct, Your Honor. And under
16 Murphy's Law, we've tested the audio system, we've done
17 everything we can to make sure it works, but I would not be
18 surprised to watch lightning bolts come out of some device or
13:14:19 **19** another. I guess the first time we do it I'm going to ask Your
20 Honor to ask the jury, can you hear this, is anyone having any
21 trouble.

13:14:27 **22** THE COURT: Two things to remind me. Are we using
23 headphones now?

24 MR. SOFER: Yes, Your Honor. I believe there are
25 headphones for everybody, all the parties.

13:14:39 **1** THE COURT: I'll instruct the jurors with the news
13:14:44 **2** if they overhear anything other than what is being said, what
13:14:51 **3** anyone seems to be hearing through the recording, that they
4 should notify us immediately. In other words, the problem, the
13:14:58 **5** hypersensitivity of the microphone, which Mr. Boss seems to have
13:15:07 **6** had fixed since yesterday --

13:15:11 **7** MR. BOSS: We've tried to deal with it.

8 THE COURT: I'm going to give the jurors the
9 standard instruction on transcript, would somebody make a note
10 for me to do that in the final jury instructions.

11 UNIDENTIFIED SPEAKER: Sure, Your Honor.

13:15:28 **12** MR. SOFER: We have a set of instructions which I
13 believe -- which relate to the headphones themselves. I
13:15:36 **14** believe they're in the jury's notebooks already.

13:15:40 **15** THE COURT: Technical as opposed to legal
13:15:42 **16** instructions?

13:15:43 **17** MR. SOFER: Indeed. I promise we have not
13:15:46 **18** inserted legal instructions into the jury's notebooks. These
19 are not that complicated but they do have a number of buttons on
20 them. If you push the bottom button the wrong way you're not
21 going to hear. If Your Honor will remind the jurors they have
22 that.

23 THE COURT: If you want to show them how they work
24 the first time around, and show the Judge as well...

13:16:09 **25** MR. SOFER: I'll do my best.

13:16:16 **1** MR. GETZ: Your Honor, might I suggest that they
2 also be advised if for some reason their batteries are running
13:16:24 **3** dead or they're having some other control problem with their
13:16:27 **4** headsets that they let the courtroom deputy know or something or
5 they raise their hand or something so they are not missing any
6 of the evidence. I think we have plenty of replacement
7 batteries and maybe some spare sets of headsets.

13:19:24 **8** (Jury enters the courtroom.)

13:19:26 **9** THE COURT: You'll note, once again, there's a
13:19:29 **10** piece of paper on your chairs. You should probably keep that
11 with your notebooks. That is a designation of the recordings
13:19:43 **12** you are about to start hearing. I believe you're aware there
13:19:47 **13** will be a number of recordings, I think primarily audio, as well
13:19:52 **14** as perhaps some occasional video recordings that according to
13:19:57 **15** Mr. Griffin were made by him during the course of his
16 participation in the investigation in this case. In a moment
13:20:06 **17** Mr. Sofer will show us all how to put on the headphones that
13:20:11 **18** you -- that we will all be using to listen from time to time to
19 the recordings.

20 There are a couple things I'd like you to give heed
21 to. First, if for any reason you're not able to hear or it
13:20:28 **22** starts to fade out on you, which would indicate a battery is
13:20:32 **23** probably going bad, simply indicate, speak up. Say: Judge, I
24 can't hear or it's starting to fade out. The other thing is
13:20:41 **25** that most of you, I think we had voir dire in this courtroom.

13:20:49 **1** For some of you it was downstairs because they were working on
2 the sound system. And not only have they vastly improved the
3 sound system, again some of you may recall some of the problems
4 we were having with it, but apparently these microphones now
5 have become very sensitive. We experienced a day or two ago in
6 trying it out that you could, with the headphones on, unless the
7 lawyers are very careful, it might be possible for you to hear
8 something that a lawyers says or perhaps even other people are
9 saying even though they're some distance from the microphone.

13:21:30 **10** I ask you, please, that if you get some kind of background noise
11 of that sort, an overlay of voices or whatever, let us know
12 because obviously if I'm saying something to Amy or Tracy or
13 whatever, or one of the lawyers is saying something to another
13:21:50 **14** lawyer or client or representative, it shouldn't come to your
13:21:57 **15** attention.

16 And then finally, I will also remind you about this
13:22:02 **17** from time to time and at the end of the trial, but you will view
13:22:11 **18** on your screen written transcriptions of the conversation that
13:22:22 **19** was recorded. And something that you should understand that is
13:22:27 **20** very important, the transcripts are not the evidence. In other
21 words, the words that you see on the screen are not the
13:22:37 **22** evidence. It's what you hear with your ears. So when there's
23 any difference of any kind, no matter how trivial it might be or
24 how insignificant it might be, the evidence that you can
13:22:51 **25** consider is what you hear of the conversation with your ears.

1 And the transcripts are very conventional, they're
2 always prepared whenever we have recordings, and the quality of
3 the recordings can vary pretty considerably for various reasons,
4 but transcripts are provided to you simply as an aid to your
13:23:16 5 understanding, to help you follow along in terms of who's
13:23:19 6 speaking and also I think you'll find that they can in fact be
13:23:23 7 helpful to you as you listen, and -- if and when the transcript
13:23:34 8 appears to deviate from what you hear, it's what you hear that
9 controls.

10 Anything further in that regard, Counsel?

13:23:42 11 MR. HARTMAN: Just one question. I'm wondering,
12 the recording is -- as they're played, are they transcribed?

13 THE COURT: I apologize, I got back shortly after
14 1:00. I let time get away from me.

13:24:10 15 MR. SOFER: We'll recall to the stand Darren
13:24:15 16 Griffin, Your Honor.

13:24:40 17 THE COURT: Mr. Griffin, I remind you you're still
13:24:44 18 under oath.

13:24:45 19 THE WITNESS: Yes, sir.

13:24:49 20 MR. SOFER: May I inquire, Your Honor?

21 THE COURT: Of course.

22 BY MR. SOFER:

13:24:52 23 Q. Mr. Griffin, I want to direct your attention to March of
24 2003 again so we can just get a general idea of timing here.

13:25:03 25 Did there come a time in March of 2003 when you took Marwan

13:25:10 **1** El-Hindi to an airport?

13:25:11 **2** **A.** Yes, the Toledo airport.

13:25:14 **3** **Q.** Do you recall why it was you took him to the airport?

4 **A.** He had to testify in front of a grand jury in Syracuse,
5 New York.

13:25:24 **6** **Q.** Did he later return from that trip and you picked him
7 up?

13:25:31 **8** **A.** Yes.

13:25:32 **9** **Q.** Did his behavior change after he returned from the trip?

10 **A.** Yes. It had seemed as a heightened state of awareness
13:25:43 **11** regarding security.

13:25:45 **12** **Q.** Was there something in specific that he said to you that
13 he was worried about?

14 **A.** He was worried about the FBI, that while he was out in
13:25:56 **15** Syracuse he was questioned by them.

16 **Q.** I just want -- I'm just asking you was there
17 something -- did he express some concern about something to you?

13:26:07 **18** **A.** Just security.

13:26:13 **19** **Q.** I want to direct your attention to the summer of 2004.

20 By the summer of 2004, had you actually spoken to Marwan

13:26:26 **21** El-Hindi about your ideology and about your willingness to train
22 individuals for Jihad?

23 **A.** Yes.

24 **Q.** Did you also discuss with him opening some kind of
25 business?

13:26:35 **1** A. There was a security company.

13:26:40 **2** Q. Can you tell the members of the jury what that security
3 company was called to the best of your recollection?

13:26:47 **4** A. It was VIP Security, which morphed into Direct Action
13:26:56 **5** Security.

13:26:57 **6** Q. At the time though it was called VIP Security?

7 A. Yes.

13:27:03 **8** Q. Had you said anything to individuals during the course
9 of the discussions about VIP Security or Direct Action Security

13:27:10 **10** providing a cover for something?

11 A. Yes.

13:27:12 **12** Q. Can you basically explain that for the members of the
13 jury?

14 A. It was a part of my identity that, once again, I was an
15 ex-Special Forces soldier, then part of it was now that I was
16 out of the military, I was opening a security company and that I
17 could train people in certain tactics and weapons training and
18 counter surveillance and so forth.

13:27:44 **19** Q. Now, you testified before about the device or the

13:27:48 **20** devices that you used to record conversations, and I believe you

13:27:52 **21** said that they had limited space or storage; is that right?

22 A. Yes.

23 MR. HARTMAN: Objection.

13:27:59 **24** THE COURT: Overruled.

13:28:02 **25** BY MR. SOFER:

- 13:28:02 **1** Q. Would you tell the members of the jury your
2 understanding, your understanding of approximately how much time
13:28:09 **3** these devices could record before running out of space?
4 A. Three to five hours.
- 13:28:17 **5** Q. Now, you told us earlier that you reviewed many of the
13:28:21 **6** recordings that you made?
7 A. Yes.
- 13:28:23 **8** Q. When you listened to these recordings were you able to
9 determine where they took place in reflection?
10 A. For the most part, yes.
- 11** Q. Can you give us a basic idea how you were able to do
12 that?
13 A. By the sounds in the background, by whether I knocked on
14 the door of the subject's house or I simply entered through a
13:28:49 **15** business doorway, or the echos that make sounds from the
13:28:57 **16** recordings.
- 17** Q. Were you able to identify the people that were speaking?
18 A. Yes.
- 19** Q. Can you basically tell us how you were able to do that?
20 A. I had spent an enormous amount of time with each, with
21 Marwan El-Hindi and Mohammad Amawi, and I knew their voices.
- 13:29:18 **22** Q. Did you also spend time with Wassim Mazloun?
23 A. Yes.
- 24** Q. And did you recognize his voice as well?
13:29:23 **25** A. Yes.

13:29:24 **1** Q. You testified earlier that Marwan El-Hindi called you at
13:29:30 **2** some point in July of '04 and told you he had the two recruits;
3 is that correct?

4 A. June of '04, yes.

5 Q. My apologies, I misspoke. Did you record that
13:29:42 **6** conversation?

7 A. Yes.

13:29:44 **8** MR. SOFER: Your Honor, at this time I'll go
13:29:46 **9** through, if it's acceptable to Your Honor, just for the members
10 of the jury and ask you to put on you're phones. There's a
13:29:53 **11** list of instructions in your books. They're not that
13:29:58 **12** complicated, but they do have some buttons on them. The -- if
13 you hold them with the round part towards you, the button that
13:30:08 **14** turns them on is on the top right. It's a little tiny button
15 and that should -- this should be the on/off button. I have no
13:30:21 **16** idea what happens if you turn them on. But I think you can
13:30:25 **17** probably hear my voice through them as I get closer to the
18 microphone. That's what the Judge was talking about as he said
13:30:33 **19** apparently it's very sensitive.

13:30:42 **20** THE COURT: Is there a 12-year-old in the house
21 that can help us out?

13:30:49 **22** MR. SOFER: There's a dual volume so you can turn
23 it up or down on both ears. They have a rolling volume at the
13:31:03 **24** bottom. My understanding is you want this last button A/B to
25 be on the A, that is out -- in. If you push it in or out it

1 may be better, but I think it's better if it's out.

13:31:28 **2** MR. IVEY: Your Honor, mine doesn't work.

13:31:34 **3** MR. HARTMAN: Mine's working but you should make

4 sure your microphone's off while we do this.

13:31:43 **5** MR. SOFER: The difficult part of this is going to

6 be the mikes in the courtroom versus having these on. We'll go

7 through as best we can, Your Honor. If I have to step away

13:31:59 **8** from the mike, that's what I'll do.

9 THE JUROR: A lot of static.

13:32:23 **10** MR. SOFER: Try changing the channel. That A/B.

13:32:26 **11** Is that better when you push it in?

13:32:47 **12** THE JUROR: I have all static.

13:32:58 **13** MR. HERDMAN: It could be the court reporter's

14 machine. Point it away from her.

15 MR. SOFER: Is everyone okay? Can everyone hear

16 me?

13:33:06 **17** If it's okay with Your Honor and Counsel we're just

18 going to run a second or two clip on here just to see if we can

19 all hear. Please raise your hand anyone having trouble.

13:33:36 **20** (Audio played).

13:33:43 **21** MR. SOFER: Can everyone hear that? Is this

22 working for everyone? Is anyone having any problem?

13:33:50 **23** THE COURT: What is the date of this conversation?

13:33:52 **24** MR. SOFER: This is June 23. I'll ask the

13:33:55 **25** appropriate questions. I just want to make sure we can hear.

1 I won't play it right away. Yes? No problems? Okay.

13:34:07 **2** BY MR. SOFER:

3 **Q.** Mr. Griffin, you've described now a couple times this

13:34:11 **4** conversation that took place in the summer of '04. On June 23,

5 '04, is that the first conversation that we're playing here at

13:34:21 **6** least that -- in which Marwan El-Hindi mentions these two

13:34:26 **7** recruits that he has?

8 **A.** Yes.

13:34:30 **9** **Q.** Okay. Let's try playing 4-4.

13:34:49 **10** (Audio recording played)

13:36:06 **11** BY MR. SOFER:

12 **Q.** Okay, Mr. Griffin, the person who was at least

13:36:12 **13** designated as T1 in that recording, who was that?

14 **A.** That is me.

13:36:17 **15** **Q.** And the voice -- the other voice on that particular

16 recording was who?

17 **A.** Marwan El-Hindi.

13:36:24 **18** **Q.** Do you remember if that was a phone call or a personal

19 meeting?

20 **A.** It was a phone call.

21 **Q.** And why did you ask him about Egypt at that time?

22 **A.** Prior conversations he stated that he had contacts in

23 Egypt and he had family members in Egypt that we could set up a

13:36:50 **24** training facility there and it would be safe for us there.

13:36:53 **25** **Q.** When you say "safe", what do you mean by that?

1 A. We would be able to train people for Jihad.

13:37:01 2 Q. Again, when you say "Jihad", what do you mean -- what
3 did you understand Jihad to mean?

4 A. Jihad in the context of my identity and --

13:37:15 5 MR. HARTMAN: Objection, Your Honor. May we
6 approach on this, please?

13:39:44 7 (Whereupon the following discussion was had at the
8 bench outside the hearing of the jury:)

9 THE COURT: First, please, whenever you're
10 attributing a statement to somebody, if you could ask them to
11 tell you when that statement was made.

12 MR. SOFER: Okay. You mean as I --

13 THE COURT: Well, he made some.

14 MR. SOFER: Previous conversation.

15 THE COURT: He said Mr. El-Hindi said something
16 about this or that. If you connect it to a time.

17 MR. SOFER: If I can or he can, I certainly will.

18 MR. HARTMAN: The basis for my objection is that I
19 know that the conversation they're talking about, the recording
20 they're talking about where they talk about a camp for training
21 in Egypt. El-Hindi never says that camp is for training for
22 Jihad. He never says that. I don't think it's right to let
23 Griffin represent it that way. What we could do, if they want
24 to play the recording, that's fine.

25 MR. SOFER: That's not the question I asked him.

1 He asked about Egypt. I asked him what he understood that to
2 mean, and then what he understood the word Jihad to mean. He
3 did not testify that that is what Marwan El-Hindi said, but I
4 believe what he said was that he had talked about doing a
5 training over there. I asked him what that training meant,
6 what kind of training. He understood. I can clarify it.

7 THE COURT: Do. Please do.

8 MR. SOFER: But the question we're about to ask --
9 I don't know if the objection will continue -- is: What is his
10 understanding of the word.

11 THE COURT: Separate the two.

12 MR. SOFER: Maybe it wasn't clear.

13 (End of sidebar).

13:39:47 14 THE COURT: Ladies and gentlemen, disregard the
15 last answer, and, Mr. Sofer, you may proceed.

13:39:54 16 MR. SOFER: Just to clarify.

13:39:56 17 BY MR. SOFER:

13:39:57 18 Q. Just to clarify something, Mr. Griffin. I don't know if

13:40:01 19 you can hear me when you have those things on or not, I hope you
20 can. When Marwan El-Hindi previously had talked about Egypt
21 and training; he didn't actually use the word "Jihad", did he,
22 to your best recollection?

23 A. Yes.

24 Q. You believe he did at some point?

13:40:17 25 A. At some point. But from the understanding that's what

13:40:20 **1** I trained for. That was the purpose of my training. The

13:40:24 **2** cover was the security company. But the purpose was to train

13:40:29 **3** Islamic extremists for Jihad.

13:40:32 **4** **Q.** That's what you had said in the past?

5 THE COURT: I'm going to strike the answer because

13:40:37 **6** it's not responsive. The question was very straight forward.

7 So the jury will disregard the last answer. Please just answer

8 the question asked.

9 Go ahead, Mr. Sofer.

13:40:47 **10** BY MR. SOFER:

13:40:48 **11** **Q.** When you would describe your company --

13:40:51 **12** **A.** Yes.

13:40:53 **13** **Q.** -- did you describe the training that it could do in

13:40:59 **14** connection with the word "Jihad"?

13:41:01 **15** **A.** Yes.

13:41:03 **16** **Q.** And by the time this last call that we had just heard

17 took place on June 23 of 2004, had you already talked in the

18 past about the fact that your security company could train,

19 among other things, for Jihad?

20 **A.** Yes.

21 **Q.** And when you used the word "Jihad" and told people about

22 it, what did you mean by that?

13:41:34 **23** **A.** Threat or violent action against people in the U.S. or

13:41:43 **24** overseas and our allies.

13:41:46 **25** **Q.** What was the motivating portion of that threat?

13:41:51 **1** A. The purpose of training, the purpose was simply to
13:42:00 **2** train. It's just doing regular training, going shooting and
13:42:05 **3** security surveillance and all that. That's legal. But the
13:42:10 **4** purpose was to fight overseas and Jihad.

5 Q. Again, "Jihad" means what in that connection?

13:42:19 **6** A. To fight. To engage the U.S. and its allies.

13:42:35 **7** Q. At the time this conversation had taken place had you
8 yet to hear Mohammad Amawi make the comments that you described
9 later? I'm sorry, poor question. Let me try to ask it a
10 different way.

11 I want to direct your attention to June 25, two
12 days later. On that particular day did you hear Defendant
13 Amawi say something which raised concerns on your part?

13:42:59 **14** A. Yes. While he was explaining his trip to Jordan, he
15 had attempted to get into Iraq to perform Jihad.

16 Q. And did he say whether he was successful?

17 A. He said he was unsuccessful due to his family members
13:43:17 **18** taking all of his money out of the bank and they had called the
13:43:21 **19** border patrol to stop him.

13:43:24 **20** Q. Did he say anything about being interested in continuing
13:43:28 **21** his efforts to join the Jihad in Iraq?

22 A. Yes. As soon as he gathered enough money he was going
13:43:35 **23** to attempt to get back to Iraq.

13:43:38 **24** Q. This is what I tried to ask you before. Were these two
25 events two days apart connected at that point?

13:43:44 **1** A. No.

2 Q. And when you described before the fact that you were

13:43:48 **3** collecting information on lots of different kinds of people,

13:43:51 **4** were those people all connected together?

5 A. No.

13:43:57 **6** Q. I want to direct your attention to June 29, 2004. By

13:44:03 **7** the way, on June 23, after Marwan told you that maybe he'd bring

13:44:08 **8** them tomorrow, did you meet those two individuals the next day?

9 A. I did not.

13:44:17 **10** Q. Now I want to direct your attention to June 29, 2004,

13:44:23 **11** about a week later. Did there come a time when you had another

13:44:27 **12** conversation with Marwan El-Hindi?

13:44:28 **13** A. Yes.

13:44:29 **14** Q. And did that concern the same two brothers and the

15 convention?

13:44:34 **16** A. Yes.

13:44:38 **17** MR. SOFER: At this time let's play 4-5, please.

13:44:59 **18** (Audio is played).

13:46:03 **19** BY MR. SOFER:

13:46:04 **20** Q. Okay. When Marwan El-Hindi said "brother" the first

21 time, what was your understanding of what he meant?

13:46:10 **22** A. I thought it was his natural brother, his family

23 brother, blood brother.

24 Q. Did he later clarify in that conversation what he was

13:46:19 **25** referring to.

1 A. Yes. He was talking about the two men that wanted
2 training.

13:46:23 **3** Q. And he said that they would help you at the table.

4 What was your stated purpose for going to this conference?

5 A. To set up a display for the local charity to gather
6 funds.

13:46:37 **7** Q. Was that one of the purposes of this ICNA conference?

8 A. Yes.

9 Q. And there's a table that is used in the conference?

10 A. Yes. There's a display table of information and how
11 you can donate.

13:46:58 **12** Q. When he uses the word "brother", but he's not referring

13 to his own brother, what did that mean to you -- what did that

14 mean to you at the time?

15 A. His brother as in thinking as in -- use that as a term
16 of endearment kind of thing, like how we would do it here, not
17 necessarily our brother but how we would think like, hey, this

13:47:26 **18** is my brother but has no blood relation or anything, just you're

13:47:30 **19** that close.

13:47:31 **20** Q. And -- okay. Again, during this period of time was

21 there any connection as yet between Marwan El-Hindi and Mohammad

22 Amawi and Wassim Mazloun as far as you were aware?

23 A. No.

13:47:47 **24** Q. Now, can you describe for the jury what Mohammad Amawi's

13:47:53 **25** apartment looks like?

1 A. It sits at 7 Shaftsbury off of Hill in Toledo, Ohio.

13:47:59 **2** It's the second structure in. On the front facade is a black

13:48:07 **3** door, you have to be buzzed in. Sometimes it will be open.

4 He stayed on the first floor, first apartment on the left. As

5 soon as you walk into the left there is the sitting area, the

13:48:20 **6** living room. On the right, the dining room table. Further to

7 the right there is a kitchen; straight ahead, once you come in

8 the front door, there's a hallway with two bedrooms and the

9 bath -- both on the left, then there's a bathroom on the right.

13:48:36 **10** Q. Did Mohammad Amawi have a bedroom there?

11 A. Yes, he did.

12 Q. And was there a computer in his room?

13 A. Yes.

13:48:45 **14** Q. Do you know who else lived there?

15 A. His brother Amr and he had a family member stay on and

16 off.

13:48:54 **17** Q. Were there times when you would spend time with Mohammad

18 Amawi that other people would come into the room where you were?

19 A. Yes.

20 Q. And where did you spend most of the time that you spent

21 at Mohammad Amawi's apartment or house?

22 A. In the second bedroom on the left, the rear bedroom.

23 Q. Can you tell the members of the jury, among other thing,

13:49:16 **24** what kinds of things you did when you were with Mohammad Amawi

13:49:19 **25** in his apartment?

1 A. We ate, and socialized.

2 Q. When you were in his room at the computer, what kinds of
3 things would you do?

4 A. We viewed materials that he was -- training and videos
13:49:41 **5** and things that he would like to do, what he would like to
6 learn, and also videos from Islamic extremist websites.

13:49:51 **7** Q. Would you tell the jury basically where you would sit
8 and where he would sit during the times you were at the
9 computer?

10 A. He would sit at the computer for the most part, the
13:50:01 **11** computer desk, and I would sit on the edge of the bed.

12 Q. Did you give computer files to Mohammad Amawi?

13:50:07 **13** A. No.

13:50:09 **14** Q. Did you ever hook your computer up to his directly?

13:50:12 **15** A. I did not, but he did.

13:50:15 **16** Q. Can you tell the jury which way the files were flowing,
17 from your computer to his or his to yours or both?

18 A. From his desktop to my laptop.

13:50:25 **19** Q. Did he ever give you program files or CDs during the
20 course of this case?

13:50:31 **21** A. Yes, he did.

22 Q. Can you tell the members of the jury basically how he
23 did that?

24 A. Basically he saved them to disk and he passed them along
25 to me primarily.

1 Q. Did there come a time when you gave Mohammad Amawi blank

13:50:45 **2** CDs during the course of this case?

3 A. Yes.

13:50:47 **4** Q. And where did you get those CDs from?

5 A. From the FBI.

13:50:51 **6** Q. Were they still in their wrappings?

7 A. Yes.

13:50:55 **8** Q. Can you tell us what else Mohammad Amawi did at his

9 computer when you were there, among other things?

13:51:01 **10** A. He would chat, he would --

13:51:03 **11** Q. You say "chat". What do you mean by that?

13:51:07 **12** A. With other people on the computer. He was the head of

13 a few chat rooms. He would give explanations about Islam and

14 the thinking, his thinking of it. He would also do cut-outs,

13:51:24 **15** he would pass one message from one person to another.

13:51:33 **16** Q. Did Mohammad Amawi help you ever to understand Arabic?

13:51:41 **17** A. Yes, he translated with me and my -- after spending so

18 many hours with him and others, my Arabic gradually got better.

19 Q. I want to direct your attention now to June 30, 2004.

20 Did there come a time when you went to Mohammad Amawi's

13:52:07 **21** apartment on June 30, 2004?

13:52:11 **22** A. Yes.

23 Q. Did you record some or all of your interaction with

13:52:15 **24** Mohammad Amawi that day?

25 A. Yes.

1 MR. SOFER: Let's play 4-13.

13:52:35 **2** (Audio is played).

13:53:00 **3** BY MR. SOFER:

4 Q. I paused that. When you said, "taking the way of the

13:53:04 **5** Shehada," what did that mean?

13:53:06 **6** A. To go martyr myself in the name of religion.

7 Q. When you say "martyr yourself"?

13:53:14 **8** A. To suicide myself, go kill myself.

13:53:42 **9** (Audio is played).

14:00:36 **10** BY MR. SOFER:

11 Q. In this conversation, Mr. Griffin, what did you

12 understand Jihad to mean as Mohammad Amawi described it?

13 A. To fight in Iraq. To fight with the Islamic extremists.

14 Q. The portion of the conversation where he's expressing

15 some debate that he had with someone, is that accurate or not?

16 A. Yes.

17 Q. Can you basically tell the jury, as you understood it,

18 what this debate was about?

14:01:06 **19** A. The debate was whether it's permissible to go perform

14:01:10 **20** Jihad if you're not in that country.

21 Q. And what was Mohammad Amawi's position?

22 A. His position was it's permissible.

23 MR. SOFER: At this time I'd like to put up 8-E,

14:01:28 **24** please.

14:01:31 **25** Judge. We have to toggle back and forth between

1 two systems, so I ask for the Court's indulgence while we do
2 this.

3 THE COURT: What was that number?

14:01:44 **4** MR. SOFER: 8-E, as in Edward.

14:01:47 **5** BY MR. SOFER:

6 Q. Can you tell the members of the jury what is depicted in
14:01:50 **7** Government's Exhibit 8-E for identification?

14:01:54 **8** A. It looks like 7 Shaftsbury.

14:01:57 **9** Q. Does it fairly accurately reflect the way 7 Shaftsbury
10 looked during at least some of the time that you interacted with
11 Defendant Mohammad Amawi?

12 A. Yes.

14:02:10 **13** MR. SOFER: Let's go to 8-A, as in Adam.

14:02:10 **14** BY MR. SOFER:

15 Q. Do you recognize what's depicted in 8-A as in Adam?

14:02:18 **16** A. Yes, the living room area.

17 Q. Does that fairly and accurately reflect the way it
18 looked at or around the time you interacted with Mohammad Amawi?

14:02:25 **19** A. Yes.

14:02:26 **20** MR. SOFER: Let's go to 8-B as in Bravo.

14:02:26 **21** BY MR. SOFER:

22 Q. Do you recognize that?

14:02:31 **23** A. Yes. That is Mohammad Amawi's bedroom.

24 MR. SOFER: Let's go to 8-C.

25 BY MR. SOFER:

1 Q. Do you recognize that?

14:02:41 **2** A. That is Mohammad Amawi's computer desk.

14:02:45 **3** Q. The desk?

14:02:47 **4** A. And the computer.

5 Q. Is that the desk or the -- strike that.

6 Does this fairly and accurately represent basically
7 how that desk looked when you were interacting with Mohammad
8 Amawi?

9 A. Yes.

14:03:01 **10** MR. SOFER: Lastly, 8-D.

14:03:01 **11** BY MR. SOFER:

12 Q. Can you tell the members of the jury what's depicted
14:03:08 **13** there?

14 A. This is the dining room area.

14:03:10 **15** Q. Does that fairly and accurately represent the way that
16 room looked basically during the time that you interacted with
17 Mohammad Amawi?

18 A. Yes.

19 MR. SOFER: At this time the government offers 8-E ,
20 8-A, 8-B, 8-C and 8-D in evidence.

14:03:27 **21** MR. IVEY: No objection.

22 THE COURT: It will be admitted.

14:03:42 **23** MR. SOFER: I want to play 4-13, 4-A. Same date,
14:04:04 **24** June 30.

14:04:12 **25** (Audio is played).

14:05:29 **1** BY MR. SOFER:

2 **Q.** Can you give the jury a basic description of what was
3 being said here?

14:05:35 **4** **A.** Once again, he was talking about if it was permissible
5 to go perform Jihad.

6 **Q.** And what did Amawi, what did you understand him to mean
14:05:47 **7** when he said if you have the intent you have the reward? I
8 think you actually said some of it.

14:05:52 **9** **A.** He had the intention of going. He attempted to go, but
14:05:57 **10** with circumstances beyond his control, he did not. So he still
14:06:03 **11** gets the reward.

14:06:05 **12** **Q.** What was your understanding of what happens if you die
14:06:09 **13** in the course of a legitimate Jihad?

14:06:13 **14** **A.** You are raised to the highest form of heaven in the
14:06:20 **15** Islamic belief.

14:06:21 **16** **Q.** I'm sorry, I should have said this, but was this second
17 clip that we just heard also on June 30, 2004.

18 Switching gears, while this is happening, June 30,
19 did you ultimately make plans to go to this ICNA conference in
14:06:43 **20** July?

14:06:44 **21** **A.** Yes.

14:06:45 **22** **Q.** Where, by the way, was that ICNA conference to take
23 place?

24 **A.** In the convention center in Cleveland, Ohio.

14:06:52 **25** **Q.** And did you ultimately meet the two recruits at the

1 conference?

14:06:59 **2** A. Yes, I did.

14:07:00 **3** Q. Do you remember what date you first met them on?

4 A. On the 3rd and then the 4th of July.

5 Q. Again, did you bring the recording device that day?

6 A. Yes, I did.

7 Q. Did the recording device or devices that you brought on
8 that day have the capability of recording audio?

9 A. Yes.

10 Q. How about video?

11 A. Yes.

14:07:19 **12** Q. Can you give the jury a basic description of your

14:07:23 **13** ability to aim the video portion of the recording device?

14:07:27 **14** A. I had to estimate. There was no way of knowing. I
15 wasn't told. I was just told a general direction.

14:07:35 **16** Q. I want to direct your attention to July 3, 2004, at the

14:07:40 **17** ICNA conference. You said that was the first place that you

14:07:44 **18** met Marwan El-Hindi's recruits?

19 A. Yes.

20 Q. And again for the members of the jury, what were their
21 names?

14:07:51 **22** A. Khaleel Ahmed and Zubair Ahmed.

14:07:56 **23** MR. SOFER: I'd like to play 4-6, please.

14:08:35 **24** MR. HARTMAN: Objection, Judge. I don't believe

14:08:44 **25** we should be playing a transcript with a tape where it's

14:08:47 **1** absolutely inaudible. You can't tell at all what's being said
2 there.

14:08:52 **3** MR. SOFER: Judge, Counsel's had this for, I don't

14:08:57 **4** know how long, years.

14:09:02 **5** THE COURT: Why don't you have the jurors take the

14:09:05 **6** headphones off and play it for me. They won't be able to hear

7 it, right?

14:09:14 **8** MR. SOFER: Your Honor, we're trying to make some

14:09:17 **9** alterations so it's not quite as loud.

14:09:27 **10** MR. BOSS: Can we turn off the transcript so it's

11 not displayed.

14:09:33 **12** THE COURT: Yeah. Turn off the monitors.

14:09:48 **13** Why don't we excuse the jury for a moment.

14:10:43 **14** (Jury exits the courtroom.)

14:10:45 **15** MR. SOFER: I'm confident, Judge, that we -- I know

16 because we've listened to it hundreds of times -- or many times,

17 that it's not the quality of the recording. It has something

18 to do with the sound system.

14:10:57 **19** MR. HERDMAN: This is a different system that's

20 playing. So it might affect the volume controls on the

21 headsets. It just might take a little tweaking. I think that

14:11:07 **22** might explain some of the discrepancy.

14:11:33 **23** MR. HARTMAN: Judge, my problem with that is

24 there's no way you can hear what's going on in this and the

25 sound is the evidence, not the transcript.

1 MR. SOFER: I agree with Counsel. We just have to
14:11:44 2 tweak the audio system.

3 THE COURT: I agree so far.

4 MR. HARTMAN: If they can find a way to do it, I'll
5 withdraw my objection. But so far...

14:11:53 6 MR. SOFER: Is there a way to control it? It's
14:11:59 7 reverbing out of control. The enhancements to the system seem
14:12:12 8 to be a little too turbo-charged.

14:12:50 9 Your Honor, if you don't use the headphones it's
14:12:53 10 much more difficult to hear.

14:12:55 11 MR. HARTMAN: Let's try it again.

14:12:58 12 MR. HERDMAN: I put the headphones on and I was
13 able to hear. Obviously, it doesn't matter.

14 THE COURT: Let's try it with the headphones.

14:13:46 15 MR. SOFER: I can hear it, Judge.

16 MR. HARTMAN: I think parts of it are probably
17 fine. But there are parts I still don't think you can

14:13:52 18 understand enough to play a transcript.

19 THE COURT: I understand. I disagree. I'm going
20 to let them -- but I will remind them if they cannot comprehend
21 something, they're to disregard the transcript.

22 MR. SOFER: Judge, just so we don't -- we'll do our
23 best. What is happening here is there are two different kinds
24 of devices. One of them may have a more powerful signal so
14:14:14 25 it's pushing it sort of through the roof of the capabilities of

14:14:18 **1** the system.

2 The one thing I would say, Your Honor, is for over
3 two years now Counsel has had these recordings. For many, for
4 over two years now they've had transcripts. If they want to
5 say something's not audible...

6 THE COURT: The problem is with the production that
14:14:37 **7** we're experiencing now.

14:14:38 **8** MR. SOFER: Understood.

9 THE COURT: Okay. Let's bring them on back.
14:18:01 **10** (Jury enters the courtroom).

14:18:06 **11** THE COURT: Thank you again for your patience.

12 The problem appears to be with the conversion to -- our enhanced
14:18:15 **13** sound system has created some problems. We may be experiencing
14:18:20 **14** different levels of loudness depending upon various recordings.

14:18:31 **15** We initially expected they would be all at the same level. So
16 you may have to adjust your headphones. The other thing is in
17 the scene that you are about to witness with the video recorded

14:18:42 **18** scene with the audio, there is a fair amount of background

14:18:48 **19** noise. I simply want to remind you that what you are to

20 consider as evidence is what you can hear of what is being

14:19:00 **21** spoken. To that end, the transcript that's been prepared can

22 assist you. But if there's a disconnect. If what you're

23 hearing for whatever reason, background noise or whatever, is

24 not what the transcript indicates, you must disregard the

25 transcript because if you can't hear it, you can't consider it.

14:19:30 **1** MR. SOFER: I think we resolved our technical

14:19:34 **2** difficulties. Let's try.

14:19:38 **3** THE COURT: You might try keeping the sound down.

14:19:44 **4** MR. SOFER: Please raise your hand if you can't
5 hear.

14:19:56 **6** (Video is played.)

14:20:30 **7** BY MR. SOFER:

14:20:33 **8** **Q.** I notice that both you and either Zubair or Khaleel say

9 "Insha Allah". Can you tell the members of the jury what that
14:20:43 **10** means as far as you understand?

11 **A.** God willing, hopefully or God willing, slash, hopefully
12 it will happen.

14:20:53 **13** **Q.** Did there come a time the next day when you actually met
14 with Zubair and Khaleel again?

15 **A.** Yes.

14:20:59 **16** THE COURT: I apologize, what tape number was that?

17 MR. SOFER: That was 1D77, 4-6 is the exhibit
18 number.

14:21:22 **19** MR. SOFER: Next is 1D77, also 4-6.

14:21:22 **20** BY MR. SOFER:

14:21:22 **21**

22 **Q.** Before we play this, now, here, this is the same
14:21:39 **23** recording device.

14:21:42 **24** **A.** Yes.

14:21:43 **25** **Q.** Did you have an opportunity between the 3rd of July and

1 the 4th of July to return that recording device to the FBI?

2 **A.** No.

14:21:51

3 **Q.** So would this be one of those examples where you
4 couldn't have gotten the recording device back to the FBI in
5 time?

6 **A.** Yes.

7 **Q.** Again, can you remind the jury where you were during the
8 3rd and 4th of July of '04?

9 **A.** I was in Cleveland, Ohio.

10 MR. SOFER: Now we can play 4-6, clip 3A, please?

14:22:13

11 MR. BOSS: What's the number again, please?

14:22:15

12 MR. SOFER: 3A.

14:23:08

13 (Video is played.)

14 MR. IVEY: Your Honor, I have an objection. Can we

14:32:46

15 approach, please?

16 THE COURT: Sure.

14:32:48

17 (Whereupon the following discussion was had at the

14:36:53

18 bench outside the hearing of the jury:)

14:36:53

19 MR. IVEY: I'd like a curative instruction to the
20 jury as it relates to Mr. Amawi. The witness has testified at

21 this particular point in time when this was played that

22 Mr. El-Hindi does not have a connection to Mr. Amawi. So these

23 statements can only be utilized in the case against Mr. El-Hindi

24 at this point because they're not in furtherance of a conspiracy

25 with Mr. Amawi because they haven't even met each other at this

1 point. So I'd like the jury to be instructed they can only
2 consider this for purposes of Mr. El-Hindi.

3 MR. SOFER: Your Honor, you could give a thousand
4 instructions all the way through the case.

5 THE COURT: I think we can set certain dates as the
6 earliest rather than go through point after point. I really
7 do. We can make that very clear.

8 MR. IVEY: I would just like at some point my
9 objection that that be done.

10 THE COURT: Let me give them a general sort of
11 instruction right now.

12 MR. SOFER: What instruction will Your Honor give?

13 THE COURT: Apparently there's no -- Amawi and
14 El-Hindi and Mazloun have not gotten together as of the date of
15 this conversation.

16 MR. SOFER: True.

17 THE COURT: So there's no conspiracy that's been
18 formed between them.

19 MR. SOFER: True.

20 THE COURT: Maybe the hub of this is Griffin, and
21 they can't be conspiring with Griffin because he's a government
22 agent.

23 MR. SOFER: No, they can't, but the law, I think,
24 is very clear. If Marwan El-Hindi is conspiring with two other
25 people, and they join into that conspiracy, they are responsible

1 for the actions of those conspirators if they join that same
2 conspiracy.

3 THE COURT: Prior to knowing.

4 MR. SOFER: Prior to, afterwards. That's basic
5 conspiracy law.

6 THE COURT: I tend to agree.

7 MR. IVEY: But they have -- I know this is coming,
8 but there's never a time when Mr. Amawi enters into anything
9 with Zubair and Khaleel. There can be a conspiracy supposedly
10 with Mr. El-Hindi and Mr. Mazloun, between the three of them,
11 not involving Mr. Amawi.

12 MR. SOFER: Your Honor will give an instruction at
13 the end of the case. You've already given a preliminary
14 instruction about all these issues, about who's responsible for
15 what in the conspiracy. Again, the notion that you would with
16 every one of these conversations start parsing them out in that
17 kind of way in the middle, the beginning of trial, doesn't make
18 any sense.

19 THE COURT: I'm just going to tell them: Ladies
20 and gentlemen, you'll recall earlier this morning I instructed
21 you -- I didn't really instruct them about the coconspirator
22 exception. What is it exactly you want me to say?

23 MR. IVEY: I would like you to say that at this
24 point that this evidence cannot be considered against Mr. Amawi.
25 And the reason I say that is because they've already -- they

1 play a tape of El-Hindi, then they play a tape of Amawi, then
2 they go to this. And it unfairly, to me, creates the
3 impression this is all one thing, and it's not.

4 MR. SOFER: I've made it very clear. I've asked
5 the witness.

6 THE COURT: I'm going to let it be. I'm going to
7 deny the request.

8 (End of side-bar discussion.)

14:36:55 9 THE COURT: You may continue.

10 MR. SOFER: Thank you, Judge.

14:36:59 11 BY MR. SOFER:

14:37:00 12 Q. A fairly lengthy conversation. I want to ask you about

14:37:03 13 a couple things that were said. Somewhere in there I believe

14:37:06 14 that Zubair Ahmed said they were developing a five-year plan.

14:37:10 15 What did you understand that to mean?

16 A. A five year training plan to get to a proficiency level
17 of understanding --

14:37:19 18 THE COURT: Well, I don't think he can testify --

19 ladies and gentlemen, you can consider a statement somebody

20 makes as evidence of that individual's intent, what the

21 individual has in mind. But no witness can elaborate upon that

22 directly or indirectly by saying that's what that person had in

14:37:47 23 mind. I'm going to instruct you to disregard that last bit of

24 evidence. To the extent you heard what was attributed to Mr.

14:37:59 25 Zubair Ahmed, you can consider that as evidence of what he may

1 have had in his mind. But this witness cannot, in effect,
2 interpret that and say, in effect, this is what that witness had
3 in mind because none of us can peer into somebody else's mind
4 and discern an intent.

5 You can ask him what he then intended to do or
6 whatever, but you cannot have him comment on what he believed
14:38:27 7 somebody meant.

14:38:29 8 MR. SOFER: Understood, Your Honor.

9 THE COURT: By a statement.

10 MR. SOFER: Perhaps I inartfully asked the
11 question. I'll move on.

12 BY MR. SOFER:

13 Q. There was a discussion about a 50 caliber. Can you
14 tell the members of the jury what a 50 caliber is from your
14:38:43 15 experience and training in the United States military?

16 A. It's a 50-caliber machine gun. It's used to engage the
17 enemy.

18 Q. Is it an offensive or defensive weapon, if you know?

19 A. It could be used as both actually.

14:38:58 20 Q. When they mention a FOID card, do you know what that is?

14:39:03 21 A. Vaguely. It is a card that you need to be a security
22 person, officer over in the state of Illinois.

14:39:17 23 MR. SOFER: Did you want to take a break?

14:39:22 24 THE COURT: Why don't we do one more then take a
25 break.

1 BY MR. SOFER:

2 **Q.** Was that one or more portion of the conversation on July

14:39:29 **3** 4th; do you know that?

4 **A.** Yes.

5 **Q.** The conversation continued?

6 **A.** Yes.

14:39:35 **7** MR. SOFER: Let's play 4-6, 4-A, please?

14:39:45 **8** THE COURT: Once again that number 4-6, and I'm

14:39:50 **9** referring to these further numbers afterwards, they're just

14:39:54 **10** clips within the same conversation.

14:40:00 **11** MR. SOFER: 4-6, 4-A, Your Honor.

14:40:23 **12** (Video recording is played).

14:40:27 **13** BY MR. SOFER:

14 **Q.** By the way, I noticed that you have taken some wonderful

14:40:34 **15** pictures so far of a white cloth. Can you describe that for

16 the members of the jury?

14:40:38 **17** **A.** That is the apron that goes around the booth that they

14:40:42 **18** were stationed at.

19 **Q.** And again, can you describe to the members of the jury

20 why, if you know, that's what we're seeing here for the most

21 part?

14:40:50 **22** **A.** Because it was a shot in the dark for me. I just got a

14:40:53 **23** general direction and had to go with it.

14:40:57 **24** MR. HARTMAN: Your Honor, I'm wondering if we can

25 make clear, because these are clips from the same date, the

1 order that they're coming in? I don't know if the one he just
2 played was before or after the one he played before.

3 THE COURT: Are these chronological?

4 MR. SOFER: They are, Your Honor.

14:41:12 5 BY MR. SOFER:

14:41:13 6 Q. Mr. Griffin, you're aware these are chronological, for
7 the most part, from your previous review; is that right?

14:41:21 8 A. Yes.

9 Q. Do you know -- there was some reference in the clip
10 before that to making Duaa. Do you know what that meant?

11 A. Making prayer, supplication, and reinforcing that may
12 this come to fruition, the training in this aspect. This

14:41:45 13 context was the training and being able to get trained to go

14:41:50 14 perform Jihad.

14:41:52 15 Q. Same conversation, same day, 1D77, 4-6A.

14:42:23 16 (Video is played.)

14:46:16 17 BY MR. SOFER:

14:46:17 18 Q. During this conversation and the previous clips was

14:46:20 19 Marwan El-Hindi present?

14:46:22 20 A. He came up at the very end of the last clip.

21 Q. Was he there for the part about the discussions about

14:46:31 22 50-caliber weapon at the end?

14:46:33 23 A. I believe he was not. He was just off of earshot,

14:46:38 24 screen shot. He was on the phone.

14:46:41 25 Q. Did you describe that you had talked to these two other

1 men already?

14:46:45 **2** **A.** Yes. He had prior told them about me from the
3 conversation.

14:46:51 **4** **Q.** Did you form an opinion about the threat at that time
14:46:55 **5** that Zubair and Khaleel Ahmed posed?

14:47:01 **6** MR. BRYAN: Objection, Your Honor.

14:47:04 **7** THE COURT: Opinion about the threat?

14:47:10 **8** BY MR. SOFER:

14:47:11 **9** **Q.** Did you want to follow up with Zubair and Khaleel Ahmed?

10 **A.** Yes.

11 **Q.** Why is that?

14:47:16 **12** **A.** They were clearly anxious to receive training and that
13 poses a threat to the United States and its allies.

14:47:31 **14** MR. DOUGHTEN: Objection.

14:47:31 **15** MR. BRYAN: Objection.

16 THE COURT: Sustained.

17 BY MR. SOFER:

18 **Q.** What kind of training did they want to receive that gave
19 you a concern that they were a threat?

20 **A.** Jihad training.

21 **Q.** Is there something in particular about what they were
14:47:43 **22** asking for that stood out to you?

23 **A.** The explosives and running with a 50-caliber Gatling
14:47:56 **24** gun.

25 **Q.** At some point in the conversation Marwan El-Hindi

14:47:59 **1** mentions starting a group. What kind of group did you
2 understand him to be discussing?

3 MR. HARTMAN: Objection.

14:48:05 **4** THE COURT: Sustained.

14:48:06 **5** BY MR. SOFER:

14:48:06 **6** **Q.** Did you know what he was talking about?

7 **A.** Yes.

8 MR. HARTMAN: Objection.

9 THE COURT: Basis. I agree.

14:48:14 **10** BY MR. SOFER:

14:48:14 **11** **Q.** Had you had previous discussions with Marwan El-Hindi
12 about forming a group?

13 **A.** Yes.

14 **Q.** And what was that group supposed to be doing?

15 THE COURT: Why don't we find out what those

16 discussions were and when they took place and who may have been

14:48:27 **17** present and who said what.

14:48:29 **18** BY MR. SOFER:

19 **Q.** Did you have discussions previously with Marwan El-Hindi

14:48:32 **20** about forming a group?

21 **A.** Yes. That was actually --

14:48:36 **22** THE COURT: Please, I'm sorry, but just answer the
23 question. The answer is yes. Let's find out when the

24 discussions were.

14:48:44 **25** BY MR. SOFER:

1 Q. Do you know the dates and times of those specific

14:48:48 **2** discussions as you sit here today?

3 A. No, I do not.

4 Q. Can you give us a basic description of what those

14:48:54 **5** discussions were about?

14:48:55 **6** A. They were -- one was in the cover, and the identity that

7 what I wanted to do was form cells to work together and to be

14:49:10 **8** ready and go engage in Jihad.

14:49:15 **9** MR. HARTMAN: Judge, I'm still going to object to

10 this because we're talking about things El-Hindi didn't

14:49:21 **11** specifically say. We're talking about his.

12 THE COURT: I agree. Let's bring it down to his

14:49:27 **13** recollection of conversations he had.

14:49:30 **14** MR. BOSS: Can we also determine whether they've

15 been recorded or not?

16 MR. SOFER: I'll move on.

17 THE COURT: I'm going to instruct the jury to

18 disregard the last sequence of questions.

14:49:40 **19** MR. SOFER: Can we please put up on the screen 11?

14:49:46 **20** THE COURT: Why don't we take a break after this

21 one.

14:49:55 **22** THE JUROR: My right speaker keeps going in and out

23 on this particular headset.

14:50:08 **24** MR. SOFER: There is not a tape, Judge. These are

25 actual pictures.

14:50:15 **1** THE COURT: Is this a recording now?

2 MR. SOFER: No, Judge, not a recording, just

14:50:20 **3** pictures.

4 THE COURT: What Exhibit Number is that?

14:50:23 **5** MR. SOFER: 11.

14:50:25 **6** THE COURT: Go ahead.

14:50:30 **7** BY MR. SOFER:

8 Q. Do you recognize Government's Exhibit 11?

9 A. Yes.

14:50:33 **10** Q. What is that?

14:50:34 **11** A. Zubair Ahmed and Marwan El-Hindi.

14:50:37 **12** Q. Is that a still shot from the video we just saw?

13 A. Yes.

14 Q. How about 12?

14:50:46 **15** A. Yes.

14:50:47 **16** Q. Do you recognize that? What's that?

17 A. Marwan El-Hindi and Khaleel Ahmed.

14:50:55 **18** MR. SOFER: 13, please.

14:50:55 **19** BY MR. SOFER:

14:50:59 **20**

14:50:59 **21** Q. Do you recognize that?

22 A. Yes. Once again, it's Marwan El-Hindi and Zubair

14:51:04 **23** Ahmed.

14:51:05 **24** MR. SOFER: At this time the government offers 11,

25 12, and 13 into evidence.

1 MR. HARTMAN: No objection.

2 THE COURT: Admitted.

14:51:13 **3** MR. SOFER: We can take a break now if you want.

4 THE COURT: Why don't we. We'll try to resume at

14:51:20 **5** five after 3:00.

15:10:49 **6** (Recess taken).

15:10:57 **7** MR. SOFER: Your Honor the government will recall

8 Darren Griffin.

15:11:31 **9** BY MR. SOFER:

15:11:33 **10** **Q.** Mr. Griffin, I think I asked you before if you followed

11 up or you desired to follow up with Zubair and Khaleel Ahmed

12 after July 3 and July 4 in Cleveland; is that right?

13 **A.** Yes.

15:11:45 **14** **Q.** Among others did the FBI contact that you were dealing

15 with ask you to follow up with them?

16 **A.** Yes.

17 **Q.** And did you make numerous attempts over the next days

18 and weeks and even months to attempt to call and meet with them

19 again?

20 **A.** Yes.

21 **Q.** And tell the jury basically why that is.

22 **A.** To gather further information.

15:12:04 **23** **Q.** Now, I want to direct your attention to July 15, 2004.

24 Did there come a time on that date when you met with Marwan

15:12:15 **25** El-Hindi at his home?

1 A. Yes.

15:12:18 **2** MR. SOFER: And I'd like us to play 4-7 from 1D81,

15:12:30 **3** clip 1-A. Your Honor, we may have to adjust the sound again

15:12:46 **4** because we're flipping back to the previous device, I believe.

15:12:54 **5** (Audio played)

15:18:58 **6** BY MR. SOFER:

15:19:01 **7** Q. To the best of your recollection, was that conversation

8 the first time you mentioned Mohammad Amawi to Marwan El-Hindi?

15:19:10 **9** A. I believe so.

10 MR. SOFER: And let's play 4-7, clip 3-A.

11 BY MR. SOFER:

12

13 Q. This is the second clip from the same day, this

15:19:29 **14** conversation continued, did it not?

15 A. Yes.

15:19:33 **16** MR. SOFER: 1D81, 4-7, 3-A from July 15, 2004.

15:19:46 **17** (Audio is played.)

15:28:07 **18** BY MR. SOFER:

15:28:08 **19** Q. Mr. Griffin, did there come a time about a week later on

15:28:13 **20** July 22 when you had another conversation with Marwan El-Hindi

21 about Zubair and Khaleel?

15:28:25 **22** A. Yes.

23 Q. Did he express some kind of doubt about their

15:28:29 **24** seriousness?

15:28:30 **25** A. Yes. They were -- he stated that they were playing

1 games.

2 Q. I want to direct your attention now to September of '04.

3 Did you continue to try to get in contact with Zubair and

15:28:50 4 Khaleel during September of 2004?

15:28:53 5 A. Yes.

15:28:54 6 Q. And again, why was that?

15:28:56 7 A. To gather information.

15:29:00 8 Q. What was the importance of gathering information on them

15:29:04 9 as far as you knew?

15:29:06 10 A. To see if they were obtaining training and if they had

11 started looking in other places to receive training.

15:29:16 12 Q. Was that something that you were concerned about and the

15:29:19 13 FBI told you to be concerned about throughout the case?

15:29:25 14 MR. BOSS: Objection.

15 THE COURT: Sustained -- well, basis? I think

15:29:35 16 it's leading the witness, but he can testify as to statements

15:29:39 17 that were made that's not for the truth of the matter asserted,

18 if that's where you're headed. I can explain that to the jury.

19 MR. SOFER: That's where I'm headed.

15:29:49 20 THE COURT: Ladies and gentlemen, from time to time

21 a witness will be permitted to testify about something that was

22 told to him or said to him by somebody else, as you just heard

23 the testimony a moment ago. As a general rule, you can

24 consider that sort of testimony as evidence of what was said to

25 the person, but you cannot consider it to prove the fact that

1 may have been said. For example, if a witness said I spoke to
2 somebody and he said the light was green, that's evidence that
3 someone told the witness the light was green, but it is not
15:30:41 4 proof that the light, in fact, was green. In other words,
15:30:46 5 simply that a statement was made, you can consider that. But
15:30:49 6 not for the truth or as proof of what was asserted. Okay,
15:30:56 7 Counsel? I may remind you of that from time to time. Go
15:31:01 8 ahead.

15:31:02 9 BY MR. SOFER:

10 Q. Were there things that you did throughout the course of
11 this case as a result of the FBI talking to you about the
15:31:16 12 concept that you just referred to, namely that someone might go
15:31:21 13 somewhere else to get something, get some kind of training?

14 A. Yes. Jihad training.

15 THE COURT: Again, that's not -- the fact that he
15:31:29 16 may have been told that is not proof that in fact the speaker
17 was concerned about somebody going to get Jihad training. You
18 can consider it only as proof that this witness was told that.
15:31:48 19 It's not proof that somebody went to get Jihad training or even
15:31:52 20 that the speaker was concerned about somebody getting Jihad
15:31:56 21 training. It's considered only as testimony as to what he was
22 told, the statement itself.

15:32:06 23 BY MR. SOFER:

24 Q. And what kinds of things did you do as a result of that
25 concern?

15:32:11 **1** A. I tried to link up with them, to gather more
15:32:17 **2** information, to ensure that because they had -- I was explained
3 by Mr. El-Hindi that they tried to get into Azhar, Afghanistan
15:32:31 **4** to perform Jihad, so to me that meant they had the intention and
5 they were serious about what they were saying when we met.

15:32:40 **6** MR. BOSS: Objection, Your Honor. The tape we
7 just listened to do specifically stated Pakistan, not
15:32:46 **8** Afghanistan.

15:32:47 **9** THE COURT: Again, the jury will recall.

15:32:50 **10** THE WITNESS: Can I clarify?

15:32:54 **11** THE COURT: The tape is the evidence of what was
15:32:57 **12** said during the conversation.

15:32:57 **13** BY MR. SOFER:

14 Q. I'll ask you: Can you clarify; can you clarify that?

15:33:05 **15** A. I misspoke, it was -- I stated it was Afghanistan, but
16 it was Pakistan. And I -- from what I understood, they were
15:33:19 **17** going to Pakistan.

15:33:21 **18** MR. BOSS: Objection.

15:33:22 **19** THE COURT: Sustained. That is exactly the kind
20 of thing I was trying to explain a few minutes ago. That he
21 may have been told something, that somebody wanted -- someone
22 said to me he wanted to go Pakistan. That's not proof that the
23 speaker that said that wanted to go Pakistan. It's proof only
15:33:48 **24** of what he was told and if the government wants to then ask him
25 what he did after that, that's fine, but a statement by somebody

15:34:04 **1** who said something to a witness cannot, unless I tell you it
2 can, but as a general rule cannot be considered as proof of what
3 was being said, the truth of what was being said; in other
4 words, in this example, whoever the speaker was in fact wanted
15:34:21 **5** to go to Pakistan or in fact wanted to do Jihad or take a
6 vacation or anything else.

15:34:27 **7** MR. HARTMAN: Your Honor, I might also ask for the
15:34:31 **8** curative instruction because of his characterization of the fact
9 they wanted to go to Azhar, whether Pakistan or Afghanistan,
10 because even the tape said Azhar is in Egypt.

11 MR. SOFER: The tape will speak for itself. The
15:34:46 **12** tape is the tape.

15:34:54 **13** BY MR. SOFER:

15:34:54 **14** **Q.** Did you continue to try to contact either Zubair or
15 Khaleel in September of 2004?

16 **A.** Yes.

15:35:02 **17** **Q.** Did there come a time in early October 2004 when in fact
15:35:10 **18** you did get in contact with Zubair Ahmed?

15:35:13 **19** **A.** Yes.

15:35:15 **20** **Q.** Let's play 1D88, Exhibit 4-9, clip 1A, please.

15:35:27 **21** MR. BOSS: 1D88.

15:35:38 **22** MR. SOFER: 1D88.

15:35:40 **23** MR. HARTMAN: Clip what?

15:35:42 **24** MR. SOFER: Clip 4-9.

15:35:42 **25** (Audio recording is played.)

15:35:42 **1** BY MR. SOFER:

15:36:23 **2** **Q.** Just to clarify something. I asked you if it was

3 October 2, the date at least we heard on the tape is Tuesday the

15:36:30 **4** 21st. Is this a series of telephone calls from your

15:36:34 **5** recollection?

6 **A.** Yes, it is.

15:36:38 **7** (Audio is played.)

15:37:48 **8** BY MR. SOFER:

9 **Q.** This particular recording, this series of recordings,
10 there are a number of them in a row, correct?

11 **A.** Yes.

12 **Q.** Can you tell the jury as best as you know why we have a

15:37:59 **13** number of recordings stacked up like this?

14 **A.** In efforts to try to reach Zubair. And it was a phone

15 call, and I -- the guidance I was given, if I was calling the

16 same person, that I could use the same tape, specifically if I

17 did not talk to them.

18 **Q.** Did you have a different device sometimes for recording

19 phone calls than the other devices you used?

20 **A.** Yes.

21 **Q.** Did you use a cassette tape recorder more like something

22 that the jury would be familiar with then?

23 **A.** Yes.

15:38:39 **24** MR. SOFER: Let's continue.

15:38:39 **25** BY MR. SOFER:

15:40:38 **1** Q. Had you missed a call, to your knowledge, during the
15:40:40 **2** first and second calls that were recorded?

3 A. To my recollection, yes.

15:40:45 **4** MR. SOFER: Let's play the next call.

15:40:48 **5** (Audio is played.)

15:42:06 **6** BY MR. SOFER:

7 Q. Do you know if that was the truth when you told him
8 that?

9 A. It was not the truth.

10 Q. Do you recall?

11 A. It was not the truth.

12 Q. There were times during the case where you did not tell
13 the truth?

14 A. Yes.

15 Q. What was the purpose of not telling him the truth there?

16 A. I had to get the recording devices ready. And in a
15:42:26 **17** position to record.

15:42:27 **18** MR. SOFER: Let's play the next one.

15:42:38 **19** (Audio recording is played.)

15:44:18 **20** BY MR. SOFER:

21 Q. You said: Go ahead with that project. Can you tell
22 the members of the jury what you meant?

23 A. The training.

15:44:25 **24** Q. Why do you use the word "project"?

25 A. Because he was speaking cryptic, so I matched that

15:44:32 **1** level.

15:44:34 **2** MR. SOFER: Okay. Continue.

15:44:39 **3** (Audio is played.)

15:46:00 **4** BY MR. SOFER:

5 **Q.** When you said "going to", what did you mean there?

15:46:03 **6** **A.** To perform Jihad.

15:46:10 **7** MR. SOFER: Keep playing.

15:46:12 **8** (Audio is played.)

15:47:43 **9** MR. IVEY: Your Honor, I would like to make an

15:47:46 **10** objection for the record. I don't think it's proper to blurt

11 it out without coming to sidebar.

15:47:56 **12** (Whereupon the following discussion was had at the

15:51:32 **13** bench outside the hearing of the jury:)

15:51:32 **14** MR. IVEY: I know the Court has already ruled but I

15 wanted to make a continuing objection to the evidence of

16 statements, recordings of Khaleel and Zubair and Ahmed during

17 this point of the trial as it relates to Mr. Amawi because at

18 this point there's been no -- I think the testimony has been

19 clear from the witness that Mr. Amawi and Mr. El-Hindi have not

20 yet met each other, and so there is therefore at this point in

21 time no conspiracy established or agreement established between

22 the two of them.

23 THE COURT: If I can interrupt.

24 MR. IVEY: So I don't have to keep coming up to the

25 side.

1 THE COURT: You don't.

2 MR. IVEY: As this comes in I wanted to make sure I
3 have a continuing objection to this for purposes of the record
4 so I don't have to keep interrupting.

5 THE COURT: Let me say any objection previously
6 made, there were a couple things that came in earlier that I
7 deem those objected to, you don't have to keep saying it.
8 Unless you tell me otherwise, the same with this. It's my
9 understanding of the law, as Mr. Sofer indicated, that
10 Johnny-come-lately into the conspiracy can get stuck with
11 everything that went before provided he joins the conspiracy and
12 becomes a participant in it. And, in fact, that if others have
13 been shown to be in a conspiracy together that he joins, what
14 they did is attributable to him. And if that's a mistake, then
15 I can untangle it quite easily by pointing out anything prior to
16 whatever the date is, the date that the government contends,
17 cannot be attributed to someone else.

18 MR. IVEY: The reason I bring this -- there can be
19 two separate conspiracies.

20 THE COURT: I understand, too.

21 MR. IVEY: I don't believe the evidence is ever
22 going to be that Khaleel and Zubair ever even met Mr. Amawi.

23 MR. BRYAN: Or that they were aware each other
24 existed.

25 MR. IVEY: Or there was discussion about the

1 others.

2 THE COURT: But if there's no nexus established by
3 the government, I'll so instruct the jury. But I think the
4 government has to be given some leeway to try to connect the
5 dots. It's up to me, at least preliminarily, to make a ruling
6 as to which any statements can be attributed. I have to make a
7 finding of a conspiracy in due course.

8 MR. HARTMAN: The government's going to allege that
9 El-Hindi and Zubair and Khaleel are co-conspirators?

10 MR. SOFER: We have in the indictment.

11 MR. HARTMAN: Okay.

12 MR. SOFER: They're named as co-conspirators in the
13 case, Judge.

14 (End of side-bar discussion.)

15:51:40 15 THE COURT: You may continue.

16 MR. SOFER: That would require me remembering where
15:51:45 17 I was.

18 THE COURT: Completed that conversation I think
15:51:51 19 between the witness and Zubair Ahmed.

15:51:56 20 BY MR. SOFER:

15:51:57 21 Q. I think towards the end of that conversation -- first of
15:52:01 22 all, strike that.

15:52:02 23 There was some mention of a list of questions that

15:52:06 24 Zubair Ahmed had given to Marwan El-Hindi. Did you ever

15:52:10 25 receive those questions?

1 A. I did not.

2 Q. And there was some further discussion about you trying

3 to reach out and talk to Marwan El-Hindi about those questions

15:52:21 **4** and other things. Did you on October 5, three days later, have

15:52:28 **5** a phone conversation with Marwan El-Hindi?

6 A. Yes.

15:52:32 **7** MR. SOFER: I'd like us to play 1D89, Exhibit

15:52:37 **8** Number 4-10, 1A.

15:52:45 **9** THE COURT: What's the date, please?

10 MR. SOFER: October 5, 2004, Your Honor.

15:53:08 **11** (Audio recording is played.)

15:56:39 **12** BY MR. SOFER:

13 Q. In this conversation, October 4, 2005, you told Marwan

14 that you didn't think the questions should be laying around.

15 What did you mean by that?

15:56:53 **16** A. The questions that Zubair said he had passed to Marwan.

17 Q. You're the one that told him you didn't think the

18 questions should be there, right?

19 A. Yes.

15:57:03 **20** MR. SOFER: Judge we have two choices. It's up to

21 Your Honor. I have a significant -- the first sort of longer

15:57:11 **22** snippet, which I prefer not to stop in the middle of --

23 THE COURT: How long?

15:57:15 **24** MR. SOFER: I can tell you almost exactly if you

25 give me a second to count it up.

15:57:42 **1** I'm going to estimate about 45 minutes with the
15:57:48 **2** questions in between, Your Honor. It could be a little
15:57:51 **3** shorter, it could be a little longer.

15:57:53 **4** THE COURT: Ladies and gentlemen, would you be
15:57:55 **5** willing to work a bit past 4:30? Candidly, I'd just as soon
6 kind of move along. The more we get done today the less we
7 have to do later. So why don't we go ahead and take the first
15:58:08 **8** segment.

15:58:08 **9** BY MR. SOFER:

15:58:15 **10** **Q.** Approximately three days after you had the conversation
11 with Marwan El-Hindi that we just discussed, did you eventually
12 meet Marwan El-Hindi at the Mayo Street address that he
15:58:29 **13** described?

14 **A.** Yes, I did.

15 **Q.** And this is a rather -- have you reviewed 1D90, the
16 conversation that took place on this day?

15:58:38 **17** **A.** Yes, I have.

15:58:39 **18** **Q.** We've cut it into a lot of small pieces. Do you recall
19 about how long this conversation was?

15:58:45 **20** **A.** An hour to an hour and 15 minutes.

15:58:52 **21** **Q.** Again, are there many conversations that you've reviewed
22 that you're going to testify about that we're playing smaller
15:59:01 **23** portions of?

24 **A.** Yes.

25 **Q.** Again, can you tell the jury, if we were to play all of

15:59:05 **1** these conversations, do you have an idea of approximately how
2 long we would be here?

3 **A.** Christmas.

15:59:13 **4** **Q.** Let's play 1D90, cut 4-11 or segment 4-11?

15:59:24 **5** THE COURT: 1D...

15:59:27 **6** MR. SOFER: 1D90 from October 8, 2004. The
15:59:32 **7** Exhibit Number is 4-11. And the clip number is 2-A, Your
15:59:39 **8** Honor.

15:59:39 **9** MR. BOSS: What is the clip, please?

15:59:41 **10** MR. SOFER: 2-A as in Adam.

15:59:44 **11** MR. SOFER: I'll play that first clip.

16:00:41 **12** (Audio recording is played.)

16:00:41 **13** BY MR. SOFER:

16:00:42 **14** **Q.** You mentioned, "this is not sell candy; this is not
16:00:48 **15** flags," I think. What were you referring to?

16 **A.** Previous dealings with Marwan El-Hindi.

17 **Q.** The business dealings you had described before, the
16:00:59 **18** business dealings?

19 **A.** Yes.

16:08:35 **20** **Q.** When you said some of these other brothers that are
16:08:39 **21** going, where are the other brothers going?

16:08:42 **22** **A.** To fight.

16:08:45 **23** MR. SOFER: Continue.

16:08:45 **24** BY MR. SOFER:

25 **Q.** You said there were -- this is a long conversation.

16:09:04 **1** There are a number of pieces.

2 MR. SOFER: Can we please play 3-A, clip 3-A?

3 (Audio recording is played.)

4 BY MR. SOFER:

16:10:59 **5** **Q.** This Muwahad that's mentioned at the end of the

16:11:03 **6** training, is this another person that Marwan El-Hindi was going

7 to introduce to you?

8 **A.** Yes.

9 **Q.** Did you in fact get introduced to him?

10 **A.** Yes.

16:11:12 **11** MR. SOFER: Let's play 4-A?

16:16:16 **12** (Audio recording is played.)

16:16:16 **13** MR. SOFER: Let's play 7-A.

14 THE COURT: 1D90?

16:16:22 **15** MR. SOFER: All 1D90 from here on in, Judge.

16:17:33 **16** (Audio recording is played.)

16:17:33 **17** MR. SOFER: Let's play 8-A, please.

16:17:36 **18** (Audio recording is played.)

16:17:36 **19** BY MR. SOFER:

20 **Q.** When you told Marwan El-Hindi that you had about eight

21 people already, was that true or not true?

16:21:00 **22** **A.** Was not.

16:21:02 **23** MR. SOFER: Let's continue.

16:21:04 **24** (Audio recording is played.)

16:21:04 **25** BY MR. SOFER:

1 **Q.** Who was the enemy you're referring to there, Mr.

16:22:00 **2** Griffin?

16:22:00 **3** **A.** U.S. forces and their allies.

16:22:04 **4** MR. SOFER: Let's play 10-A.

16:23:12 **5** MR. HARTMAN: Objection, Your Honor. May we

16:23:15 **6** approach?

16:23:18 **7** (Whereupon the following discussion was had at the

16:25:33 **8** bench outside the hearing of the jury:)

16:25:33 **9** MR. HARTMAN: There are several conversations in

10 some of these tapes about wives and the first wife and second

11 wife. I don't see how it's at all relevant to the charges. I

12 know it makes Mr. El-Hindi look bad, but it's not relevant.

13 MR. SOFER: I don't think having a lot of wives

14 necessarily makes him look bad. Some may say it makes him look

15 good. I say that facetiously. The fact of the matter is the

16 government's introducing this to show the level of familiarity

17 he has with the person on the other end of the line, which is

18 Khaleel on this call. I have no problem with a curative

19 instruction from the Court saying this may also be a cultural

20 thing.

21 THE COURT: What's the --

22 MR. HARTMAN: I don't know that he was divorced yet

23 or not because there's a difference between a legal divorce and

24 a divorce in the Islamic way.

25 THE COURT: Candidly, is there going to be a lot of

1 this stuff about wives?

2 MR. SOFER: Very little, Judge. As far as I know
3 this is the only one that we plan to play. I say that,
4 understand I really haven't focused on how many wife
5 conversations.

6 THE COURT: If we get more...

7 MR. HARTMAN: That's fine.

8 THE COURT: He wouldn't be the first guy in the
9 world to talk about a first wife, second wife. Fortunately, I
10 don't have that problem.

11 (End of sidebar.)

16:25:39 **12** THE COURT: Were you asking a question?

16:25:41 **13** MR. SOFER: No, we were stopped because of the
14 objection which, I take it, for the record has been overruled.

16:25:47 **15** Let's keep playing.

16:25:49 **16** (Audio recording is played.)

16:29:36 **17** BY MR. SOFER:

16:29:37 **18** Q. Mr. Griffin, do you know who Marwan El-Hindi was taking

16:29:40 **19** to at that point?

16:29:41 **20** A. Khaleel Ahmed.

21 Q. Was the uncle he was talking about Zubair's father or
16:29:49 **22** don't you know?

23 MR. HARTMAN: Objection.

24 THE COURT: Sustained.

16:29:52 **25** BY MR. SOFER:

16:29:52 **1** **Q.** Do you know who he was referring to when he said

16:29:56 **2** something about what your uncle says is -- he used an expletive?

16:30:02 **3** MR. HARTMAN: Objection.

16:30:03 **4** THE COURT: I would agree. Let's get some
5 foundation. How does he know Mr. El-Hindi was talking to Mr.

16:30:11 **6** Ahmed?

7 MR. SOFER: Excellent question, Your Honor.

16:30:13 **8** BY MR. SOFER:

16:30:14 **9** **Q.** How do you know he was talking to Khaleel Ahmed?

16:30:17 **10** **A.** He stated it when he dialed actually Khaleel and stated
11 that in the beginning of the conversation.

16:30:23 **12** **Q.** And were you talking about Khaleel and Zubair just prior
13 to that?

14 THE COURT: I couldn't hear your question. Maybe
16:30:31 **15** put the Mike on.

16 MR. SOFER: Strike the question, Your Honor.

16:30:40 **17** Let's go on to the next segment, 11-A, Your Honor.

18 THE COURT: 11-A.

16:31:12 **19** (Audio recording is played.)

16:31:12 **20** BY MR. SOFER:

16:31:13 **21** **Q.** Again, you say something about trying to get training

16:31:17 **22** somewhere else. Is that something you were concerned about
23 there?

24 **A.** That they would find training somewhere else and I would
16:31:30 **25** lose a contact and wouldn't be able to get information on them.

16:31:59 **1** MR. SOFER: Let's play 12-A.

16:32:04 **2** (Audio recording is played.)

16:33:11 **3** MR. SOFER: If we can switch over to the exhibits,

4 take the headphones off and show us 6-A, please.

16:33:21 **5** BY MR. SOFER:

16:33:23 **6** **Q.** Mr. Griffin, do you recognize what's depicted in

7 Government's Exhibit 6-A for identification?

8 **A.** Its is the Mayo Street address of Marwan El-Hindi.

16:33:35 **9** **Q.** To the best of your recollection is this where the

16:33:39 **10** conversation we just listened to takes place?

16:33:41 **11** **A.** Yes.

12 **Q.** Does it fairly and accurately reflect the way it looked

16:33:45 **13** approximately during the time you were interacting with Marwan

14 El-Hindi as just described?

15 **A.** Yes.

16 MR. SOFER: At this time the government moves 6-A

17 into evidence.

16:33:55 **18** MR. HARTMAN: The only thing I can't tell is if

19 that was before or after it was burned. Greg, this picture

20 just doesn't seem that clear. Do you have the original?

21 That's the house we'll stipulate to it.

22 THE COURT: Does anybody know when the picture was

16:34:09 **23** taken?

24 MR. SOFER: I believe it was taken sometime in

25 February of '06.

16:34:15 **1** THE COURT: It will be admitted.

16:34:19 **2** MR. SOFER: Judge, this would be an ideal place to
16:34:22 **3** stop.

4 THE COURT: Okay. Good enough. Ladies and
16:34:31 **5** gentlemen, we will adjourn for the day. Do not talk about the
6 case with anybody. Keep an open mind. I notice that there
7 was a cover story in Toledo's Blade about the case. Please
16:34:41 **8** refrain from looking at The Blade or any part of that newspaper
16:34:48 **9** today, and we'll see you tomorrow morning. We'll start promptly
10 at 8:30.

16:34:58 **11** Thank you very much for your patience and your
16:35:00 **12** attention.

16:35:53 **13** (Jury exits the courtroom.)

14 THE COURT: There's a motion Amy just gave me.
15 Motion to reconsider denied discovery request. Have you seen
16:43:13 **16** that?

17 MR. SOFER: I didn't hear what you said.

18 THE COURT: Amy just gave me a motion, Request for
16:43:18 **19** Reconsideration of Denial and Discovery Relevant to Informants.

16:43:23 **20** MR. SOFER: I think we may have seen some of that.
21 This is for the underlying documents with respect to the Giglio
22 letter we sent out.

23 MS. CLEARY: That's correct, Your Honor.

24 MR. SOFER: The government's position, just to
25 remind the Court, not only was the Giglio letter over-inclusive

16:43:43 **1** under Rule 068 and 069 the defense would even be entitled to
2 question our witness about -- there's nothing about the
16:43:53 **3** underlying records which I think is necessary to turn over in
4 order for the defense to have received any information they need
5 about the witnesses in order to cross-examine them.

16:44:08 **6** They couldn't put those records in if they wanted
7 to. They can't cross-examine the witness about at least a
8 third of what we turned over in terms of the Giglio letter
9 because of its remoteness in time, or we have actual particular
10 cases about particular kinds of information that we've turned
11 over to Counsel. The notion that they should be allowed some
16:44:30 **12** massive discovery in records, there's nothing that's not been
16:44:36 **13** turned over in terms of the things that they need to know.

14 Things that reflect the payments of how much we're talking
16:44:44 **15** about. That's for us to break down the moment the payments
16 were made. Do an accounting of how the FBI paid on a weekly
17 basis seems to me to be well beyond that which is necessary.

16:44:57 **18** THE COURT: I tend to agree. What matters is the
19 fact and the amount of payments. I think it's probably
16:45:07 **20** appropriate to ask in terms of the periodic distribution of the
16:45:11 **21** payments and so forth, but actually having the records, to the
16:45:15 **22** extent that the government has them available, I trust if there
23 were any inconsistencies in the testimony, that's fine. But he
24 testified during a the six-year period he was paid approximately
16:45:29 **25** 240, \$250,000; I thought it was monthly, but that can be

1 inquired into. It's my understanding you have disclosed

16:45:41 **2** whatever quasi-criminal record...

3 MR. SOFER: Not only did we disclose it, we brought
4 it out in court.

16:45:47 **5** THE COURT: I understand. And certainly it is not

16:45:50 **6** my understanding that the kind of specificity that you're

16:45:55 **7** requesting in this letter -- or this motion is required.

8 MS. CLEARY: The reason we submitted the additional
9 authority, Your Honor, is because we think that we're entitled

16:46:09 **10** to the understanding of the nature of the agreement between Mr.

16:46:13 **11** Griffin and the government. And that's something that's

12 necessary not only for Brady but for impeachment purposes which

13 is encompassed by Brady.

14 THE COURT: I would agree. You have an

15 opportunity to cross-examine on that. And I mean, let me ask

16:46:28 **16** Mr. Sofer: To your knowledge was there any kind of written

16:46:31 **17** agreement or understanding; do you know?

18 MR. SOFER: There is administrative paperwork

19 that's filled out when as -- as I understand it, an informant --

20 THE COURT: Is that filled out between the

16:46:41 **21** cooperating witness and the government agent or is that internal

22 to the Bureau itself?

16:46:47 **23** MR. SOFER: I'd have to ask --

24 THE COURT: Why don't you. If it's internal to

25 the Bureau, I don't think it's appropriate as to disclosure.

1 If, however, there's something signed between the witness and
2 the government agent then I think it's appropriate that it be
3 disclosed. Why don't you find out.

16:47:04 **4** MR. SOFER: Just so I understand, you're talking

16:47:09 **5** about an agreement -- I want to make clear what that means --
6 something that encompasses what do you have to do and what do we
7 have to do, a contract or...

8 THE COURT: Well the equivalent would be a plea
16:47:22 **9** bargain if there had been a 5-K.

10 MR. SOFER: To my knowledge, there is no such
16:47:27 **11** paperwork but let me, before I answer that finally, if I can
12 answer that tomorrow morning, I'd appreciate the opportunity.

16:47:36 **13** THE COURT: Sure. You refer to administrative
14 paperwork. The impression I got from that reference is the
15 case agents have to, I assume, make a request to whoever's
16:47:47 **16** supervising the office over there, turn it in to the resident
17 agent who's got to turn it in to headquarters who's got to go
18 through various channels and memos and so forth and so on, and
19 it filters its way back down. I don't think any of that would

16:48:02 **20** properly be discoverable. It's an internal administrative

21 matter. What matters is the fact at some point the cash
16:48:09 **22** register was open and the money started flowing. But if -- on

16:48:13 **23** the other hand, if at some point Agent Radcliffe or Agent Coats
24 or anybody else sat down and said look, this is the deal, and to
25 get this set up, this is a memorandum of understanding...

1 MR. SOFER: I understand. Ultimately what we're
2 talking about here are what benefits were given to the witness.

16:48:32

3 It may be, Your Honor, if in fact there is something that is a
4 quasi-contract of that nature, I'd ask for leave to show it to
5 the Court and have Your Honor determine whether or not it's
6 discoverable, but let's come to that bridge --

7 MR. BRYAN: Your Honor, the records are also
8 important because of the timing of the benefits. Mr. Sofer
9 made it a point to bring out to Mr. Griffin that since he's been
10 working with the FBI, he's made approximately \$350,000 or so;
11 per year, you're making about 50. So I think what they're

16:49:07

12 trying to do is sort of minimize it. But if all of it came in
13 one year when he was producing the most fruit --

14 THE COURT: If he got \$10,000 for five years and
15 \$300,000 on January 1 of this year, I understand what you're
16 saying. And it could be asked. He can be asked.

16:49:20

16:49:23

17 MR. SOFER: He was asked that question, Your Honor.
18 I believe the testimony, if we read it back, is he was paid
19 monthly by the FBI, and I can clarify that. I'd be more than
20 happy to.

16:49:30

16:49:35

16:49:36

21 MR. BRYAN: It was my understanding the question
22 was in averages, the average would be \$4,000 a month.

23 THE COURT: Anybody can ask about that. We don't
24 need to have copies of the cancelled checks or receipts or the
25 pay stubs or -- apparently he was paid in cash, in any event.

1 MR. SOFER: I'll clarify with him in the morning.

2 MR. HARTMAN: Judge --

16:49:56 3 THE COURT: It would be interesting to find out if

16:50:00 4 federal judges aren't the only ones who have gotten a cost of

16:50:04 5 living adjustment in recent years.

6 Mr. Hartman, go ahead.

16:50:07 7 MR. HARTMAN: Judge, I would like to assert our --

8 or reassert our Motion for Inspection of the Recording Device

9 based on the following.

10 THE COURT: We'll get -- I don't think this is the

11 place to raise that issue.

12 MR. HARTMAN: Let me know when you want me to.

16:50:24 13 THE COURT: Okay.

14 MR. SOFER: We'll be ready tomorrow, Judge.

15 THE COURT: Counsel, why don't you come on back?

16 I don't think we need the defendants for this.

17 (Whereupon there was a discussion in chambers

18 ordered sealed by order of the court.)

19 - - -

20 C E R T I F I C A T E

21 I certify that the foregoing is a correct transcript from the

22 record of proceedings in the above-entitled matter.

23

24 /s Tracy L. Spore _____

25 Tracy L. Spore, RMR, CRR Date

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DARREN GRIFFIN, DIRECT EXAMINATION2207

BY MR. SOFER: